(29,774)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 464.

SWISS NATIONAL INSURANCE COMPANY, LIMITED, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 19, 1923.

[fol. 1] **COURT OF APPEALS OF THE DISTRICT OF COLUMBIA**

No. 3842

SWISS NATIONAL INSURANCE COMPANY, LTD., a Corporation, Appellant,

vs.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States, Appellees.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 39603

[Title omitted]

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

[fol. 2] IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. 39603

[Title omitted]

BILL OF COMPLAINT—Filed November 28, 1921

The Plaintiff complains and says:

1. That plaintiff is a corporation duly incorporated under and by virtue of the laws of the Republic of Switzerland.

2. That defendant, Thomas W. Miller, resides in the District of Columbia, and is sued herein as Alien Property Custodian of the United States, and that the defendant, Frank White, also resides in the District of Columbia, and is sued as Treasurer of the United States.

3. That plaintiff is a citizen of the Republic of Switzerland, doing business, and having its principal office, at Basle, Switzerland.

4. That under its charter it was authorized to do a reinsurance business in Switzerland and elsewhere.

5. That in 1910 plaintiff conducted a fire insurance business in the United States of America through its branch office in New York

City, and continued to conduct this business under a license issued to it by the Government of the United States for some time after the United States entered the World War.

6. That at the time plaintiff began doing business in the United States, and ever since said time, plaintiff has been a corporation duly incorporated under the laws of the Swiss Republic.

7. That on, or about, the 18 day of Nov. 1918, the property of plaintiff, hereinafter more fully described, was taken over by the Alien Property Custodian, and all of said property, together with the income and accruals therefrom, is now in the possession and control of the defendants.

8. That the Swiss Republic has at no time been at war with the United States, but has at all times been a friendly neutral.

9. That by direction of the Government of Switzerland the Minister of Switzerland in Washington has brought the fact that plaintiff is a Swiss corporation and a citizen of Switzerland to the attention of the Secretary of State of the United States, and has requested that the property of plaintiff, taken over by the Alien Property Custodian, be returned to him.

[fol. 3] 10. That the property of plaintiff was taken over by the Alien Property Custodian upon the ground that, while a Swiss corporation, it was conducting a reinsurance business in a country at war with the United States.

11. That the war having ended plaintiff, on the 6th day of November, 1921, filed with the Alien Property Custodian notice of claim to the money and property, hereinafter described, upon forms provided for the purpose by the Alien Property Custodian.

12. That for the conduct of its business plaintiff had a large number of American securities used principally for deposit, according to law, with the various states for the better security of its policy holders.

13. That the property belonging to plaintiff in the hands of defendants consists of the following:

New York City Bonds	$5,000
" " " "	200,000
United States Government	100,000
Chicago Milwaukee & Puget Sound Ry. 1st Mtge	50,000
Illinois Central R. R. Ref. Mtge	50,000
Kansas City Ry. Terminal 1st Mtge	50,000
New York Ontario & Western Ry. Gen. Mtge	50,000
City of St. Louis Mo	50,000
Central Pacific Ry. 1st Ref. Mtge	100,000
Chicago & North Western Ry. Gen'l Mtge	50,000
Southern Pacific R. R. 1st and Ref. Mtge	50,000
Union Pacific R. R. 1st & Ref. Mtge	30,000
Virginian Ry. 1st Mtge	75,000
New York State Canal Improvement	50,000
New York City	50,000
New York City	50,000

Togther with all income and accruals and such other further property as may be in the hands of the Alien Property Custodian or the Treasurer of the United States belonging to plaintiff.

14. That the reason for possession of said money and property on the part of the Alien Property Custodian or the Treasurer of the United States has ceased, and plaintiff is entitled, both equitably and by provisions of Trading With the Enemy Act, to the return of its property with the increase thereof, changes therein, and income therefrom.

Wherefore, the plaintiff prays:

1. That a writ of subpœna be issued citing the defendants to appear and answer complaint;

2. That an order and decree be made and entered, requiring the defendants, the Alien Property Custodian and the Treasurer of the United States, to pay, assign, transfer, and deliver the said monies and property, with the increase thereof, changes therein, and income therefrom to the plaintiff, and

3. That such other and further relief be granted as the court shall deem proper.

Hoke Smith, Solicitor for Plaintiff.

[fol. 4] BOROUGH OF MANHATTAN,
State of New York:

Personally appeared Carl Schreiner, who on oath says that he is Attorney in Fact for the Swiss National Insurance Company, Ltd., for all the states of the United States of America, and as such swears that the statements contained in the foregoing petition are true.

Carl Schreiner.

Sworn to and subscribed before me this 19th day of November, 1921. Madeline Roth, Notary Public, New York County. [Seal.] N. Y. Co. Clerk's No. 199. N. Y. Co. Reg. No. 3014. Kings Co. Clerk's No. 3. Kings Co. Reg. No. 3005. Bronx Co. Clerk's No. 2. Bronx Co. Reg. No. 3. Commission Expires March 30, 1923.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

AMENDMENT TO BILL—Filed January 6, 1922

* * * * * * *

The Plaintiff amends the Bill of Complaint in the above stated case and says:

15. That the Plaintiff was and is a corporation incorporated under and by virtue of the laws of Switzerland, a country other than the

United States, and that Plaintiff prior to January 1st, 1917, did an insurance business and continued until the present year to do such business within the territory of Germany, but during the present year Plaintiff has sold its German business and has ceased doing business in Germany.

Hoke Smith, Solicitor for Plaintiff, Swiss National Insurance Co.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

MOTION TO DISMISS—Filed January 16, 1922

* * * * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the amended bill of complaint, and as their separate and several grounds for the said motion assign the following:

(1) That it appears affirmatively from the allegations of the [fol. 5] amended bill of complaint that the plaintiff herein is an enemy within the purview and meaning of the Trading with the Enemy Act, the amendments thereto and proclamations and executive orders issued thereunder;

(2) That it appears affirmatively from the allegations of the amended bill of complaint that the plaintiff herein has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act as amended.

Wherefore, these defendants pray that they be dismissed with their costs in this behalf expended, and for such other and further relief to which in the premises they may be justly entitled.

Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

OPINION OF COURT—Filed May 26, 1922

* * * * * * *

Section 2-*a* of the Trading with the Enemy Act refers to individuals, to partnerships, to other bodies of individuals, and also to corporations. Subdivision 1 of Section 9 of the amendment of June 5, 1920, refers to citizens or subjects of enemy States; Subdivision 6 of

said Section 9 refers to partnerships, associations or other incorporated bodies of individuals outside the United States or corporations incorporated within any other country than the United States and entirely owned by subjects or citizens of countries other than enemy countries. The plaintiff claims that the word "citizens" in Subdivision 1 of Section 9 of said amendment includes corporations. While it is true that our courts have held that for many purposes, especially with reference to the jurisdiction of the Federal courts, a corporation is a citizen of the state by which it is incorporated yet the word "citizens" does not necessarily include corporations.

Western Turf Association vs. Greenberg, 204 U. S., 359.

As corporations are expressly included in Subdivision 6 and are not expressly mentioned in Subdivision 1 of Section 9, I think the intention of Congress was not to include corporations within said Subdivision 6.

The only question that remains is the meaning of the words, "entirely owned at such time by subjects or citizens of nations, etc." other than enemy countries. The only meaning that can be given to this with reference to corporations issuing capital stock would be that the stock of such corporations be owned by subjects etc., and this [fol. 6] is the only construction that would give any meaning to this phrase.

The bill will be dismissed.

Jennings Bailey, Justice.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FINAL DECREE—Filed June 12, 1922

* * * * * * *

Upon consideration of the bill of complaint filed herein and motion to dismiss the same, filed on behalf of Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and upon consideration of the arguments of counsel on behalf of all parties, and plaintiff having elected in open court to stand upon its bill of complaint, it is by the court, this 12 day of June, 1922,

Adjudged, ordered and decreed, that the bill of complaint be, and the same hereby is, dismissed.

Jennings Bailey, Justice.

From the foregoing decree, plaintiff in open court notes an appeal to the Court of Appeals of the District of Columbia, and the bond for costs fixed at $100.00, or in lieu thereof a cash deposit of $50.00.

Jennings Bailey, Justice.

Memorandum

June 19, 1922.—$50 deposited in lieu of Appeal Bond.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

ASSIGNMENTS OF ERROR—Filed June 19, 1922

* * * * * * *

The Court, in the above stated case, having dismissed the bill of complaint, and the plaintiff, in open court, having given notice of an appeal to the Court of Appeals of the District of Columbia, the plaintiff assigns as the error committed by the trial Court, the rendition and entering by the Court of the judgment, order and decree dismissing the bill of complaint of plaintiff, above referred to.

Hoke Smith, Attorney for Plaintiff.

[fol. 7] IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed June 19, 1922

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia:

You will please prepare the following as the transcript of record on appeal to the Court of Appeals in the above entitled case.

1. The original bill and the amendment thereto.
2. Motion to dismiss.
3. Memorandum opinion of Justice Bailey.
4. Order of the court dismissing bill.
5. Appeal in open court from the said decree.
6. Memorandum of cash deposit of $50.00 in lieu of bond.
7. The above assignments of error.
8. This designation of the record.

Hoke Smith, Attorney for Plaintiff.

Service of the assignments of error and the designation of the transcript of record acknowledged this 16th day of June, 1922.

Dean Hill Stanley, Special Assistant to the Attorney General.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

ADDITIONAL ASSIGNMENTS OF ERROR—Filed June 23, 1922

* * * * * * *

The plaintiff in the above stated case, having heretofore filed assignments of error to the judgment rendered by the court, dismissing

the bill of complaint of plaintiff, now presents these additional assignments of error, before the expiration of 20 days from the date of the judgment complained of.

First, the court erred in the construction of paragraph "B" of Section 9, and in holding that the word "citizen" in subdivision 1 of paragraph "B" of section 9 did not include corporations, and the court erred in the construction placed upon subdivision six of said paragraph.

Second, the bill of complaint showed that the property of plaintiff was taken over by the Alien Property Custodian upon the ground that it was conducting a business in a country at war with the United States. The bill of complaint further showed that the war had ended, and that the reasons for the possession of said money and property on the part of the Alien Property Custodian or the Treasurer of the United States had ceased.

These and similar allegations in the bill of complaint gave the plaintiff a right to the return of its property under paragraph "A" [fol. 8] of section 9 of the Trading With the Enemy Act, and under the Act as a whole.

The court, for these reasons, erred in entering the judgment, order and decree dismissing the bill of complaint of plaintiff.

Hoke Smith, Attorney for Plaintiff.

To the Clerk of the Supreme Court of the District of Columbia:

You will please add to the transcript of record on appeal to the Court of Appeals in the above stated case, the above assignments of error.

Hoke Smith, Attorney for Plaintiff.

Service of the above assignments of error acknowledged this 23rd day of June, 1922.

Dean Hill Stanley, Special Asst. to the Atty. Gen.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 10, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39603 in Equity, wherein Swiss National Insurance Company, Ltd., is Plaintiff and Thomas W. Miller as Alien Property Custodian et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of June, 1922.

Morgan H. Beach, Clerk. (Seal of the Supreme Court of the District of Columbia.) M. H./E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3842. Swiss National Insurance Company, Ltd., a corporation, appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, appellees. Court of Appeals, District of Columbia. Filed Jul. 7, 1922. Henry W. Hodges, clerk.

[fol. 9] In Court of Appeals of the District of Columbia

Argument of Cause

Thursday, February 8th, A. D. 1923.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was commenced by Mr. Hoke Smith, attorney for the appellant.

[fol. 10] Friday, February 9th, A. D. 1923.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was continued by Mr. Hoke Smith, attorney for the appellant, and by Mr. Dean H. Stanley, attorney for the appellees and was concluded by Mr. Hoke Smith, attorney for the appellant.

[fol. 11] Court of Appeals of the District of Columbia

[Title omitted]

Opinion

Argued before Smyth, Chief Justice; Robb, Justice, and Martin, Judge, United States Court of Customs Appeals.

Judge George Ewing Martin delivered the opinion of the Court:

Appeal from the Supreme Court of the District of Columbia.

This case arises under The trading with the enemy act, approved October 6, 1917, 40 Stat. L. 411, as amended June 5, 1920, 41 Stat. L. 977.

The suit was brought by the Swiss National Insurance Company,

Ltd., a Swiss corporation doing business in this country, against the Alien Property Custodian and the Treasurer of the United States, to recover possession of certain of its assets consisting of securities which it had deposited in this country as required by law, and which had been seized by the Custodian in November, 1918, the ground of the seizure being that the company although incorporated in Switzerland was also doing business within German territory and therefore was an enemy as defined by the act. The plaintiff admitted that it had been engaged in business in Germany at the time of the seizure, but alleged that it had since withdrawn from that country, and was no longer doing business therein. The plaintiff claimed that because of that fact, and also because the war had been officially declared at an end, there remained no justification for the retention of its property by the Custodian, and that in equity and under the law as amended it was entitled to recover the possession thereof, and it prayed for suitable relief.

[fol. 12] A motion to dismiss the bill was filed by the defendants upon the ground that the bill failed to aver that the corporation at the time of the seizure and at present, was entirely owned by subjects or citizens of neutral countries. The defendants contended that the omission of that averment was fatal to the bill. The court sustained the motion and dismissed the bill, from which decision the plaintiff appealed.

The plaintiff based its right to a recovery upon three grounds, to wit, first that no reason existed for the retention of the property by the Custodian in view of the fact that the war with Germany had been officially declared at an end, second that the enemy status of the plaintiff had ceased when it discontinued its business within enemy territory and accordingly that it was entitled to recover as a non-enemy under section 9 (*a*) of the act as amended, and third that it was entitled to recover as a citizen of a neutral country under the provisions of section 9 (*b*) of the act as amended.

We answer these claims as follows. It is certain that the sequestration of the property in question was authorized by the act. Under section 2 the plaintiff was an enemy, since it was doing business within enemy territory, and under section 7 enemy-owned property was made liable to seizure by the Custodian. It is equally certain that no subsequent change in the situation of the plaintiff could relieve the sequestered property from its status as enemy-owned property. Otherwise the law could not have been administered effectively. It would have been useless to seize enemy-owned property if the owner could recover it immediately by the simple expedient of changing his residence or his place of business. It is also certain that Congress did not intend that the official termination of the war should ipso facto entitle the owners of sequestered property to recover the same from the Custodian. Section 12 of the act reads in part as follows:

After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct.

[fol.13] The act unmistakably discloses that Congress intended the Custodian to retain possession of the sequestered property after the end of the war, until the final disposition thereof should be determined by future legislation.

These conclusions negative all of the claims presented by the plaintiff except that made under Section 9 (*b*) of the amendment of June 5, 1920. That enactment provided that the owners of property thus sequestered should be entitled to recover possession thereof from the Custodian, if at the time of the sequestration and also of the demand therefor, they answered to certain descriptions, among which were the following, to wit:

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

* * * * * * *

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or * * *.

The plaintiff claims the right to a recovery herein under subsection (1), supra, upon the ground that it always was and still is a "citizen" of a neutral country, to wit, Switzerland. The defendants however contend that the word "citizen" as used in the subsection was not intended by Congress to include corporations but only natural persons. We think that the word "citizen" would ordinarily include corporations as well as natural persons, but in subsection (6), supra, Congress deals specifically with corporations for the purposes of the amendment, and thereby indicates that the first subsection was not intended to apply to them.

[fol. 14] The two subsections in question are cognate provisions of the same enactment, and should be construed together. It is elementary that where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to the subject as against general provisions in other parts of the act, although the latter standing alone would be broad enough to include the subject to which the more particular provision relates. Endlich, Interpretation of Statutes, Sec. 216. This rule sustains the foregoing conclusions, since subsection (6) treats of corporations in particular, whereas subsection (1) treats of citizens in general. Another rule of statutory construction which tends to sustain this interpretation is to be found in the maxim, Expressio unius est exclusio alterius, for according to that rule the provision in subsection (6) for a restricted class of corporations would impliedly exclude therefrom all corporations of an opposite character. Furthermore under the plaintiff's

interpretation subsection (6) would be denied any force or effect as part of the act, for if all corporations belonging to neutral countries are to be governed by subsection (1) as "citizens" of such countries, there remains none for subsection (6) to govern or refer to. The plaintiff undertakes to answer this view by the following statement;

There were corporations in Germany all the property of which and all the stock of which *was* owned by citizens of the United States, and citizens of countries with which the United States was not at war. Subsection 6 was intended to reach these organizations.

We cannot accept this interpretation of subsection (6). It may be possible that there existed some German corporations all the stock holders of which were citizens of the United States or of neutral countries, although we are without authority upon that subject. It does not appear however that such corporations, if any existed, were among the claimants whose property had been seized by the Custodian, and who were seeking a return thereof. They are nowhere [fol. 15] mentioned in the official reports or correspondence relating to the enactment which will be referred to later herein. Such corporations, if any existed, would have been German citizens or subjects and accordingly enemies under the primary purpose of the act. That purpose was to prevent the transmission of money or property from this country into enemy countries, where it would serve to increase the resources of the enemy. Such a purpose would be defeated if a German corporation were permitted to recover its money or property from this country and remove it into Germany, whether the stockholders thereof were citizens of Germany or of neutral countries. For in either event the resources of an enemy country would thereby be increased. The effect of such a provision would be magnified by the fact that subsection (6) includes partnerships, associations, and other unincorporated bodies of individuals outside the United States within the same class as corporations for the purposes of the subsection. The contention of the plaintiff therefore must necessarily apply to the former classes also, which adds confirmation to the decision herein reached. It may be noted that at the time when the amendment was enacted a technical state of war still existed between this country and Germany, and the provisions of the amendment clearly show that it was not intended by Congress to abandon the elementary purposes of the act.

We conclude accordingly that the favor of the amendment was not extended to corporations incorporated in countries other than the United States the capital stock of which was owned in whole or in part by subjects or citizens of Germany. This conclusion has the effect of course of excluding the plaintiff from the benefit of the amendment, since it is not denied that it was owned in part at least by citizens of Germany.

Various public letters and statements issued during the preparation and passage of the amendment, emanating from the Attorney General, the Secretary of State, and from members of Congress in contact with the bill, have been cited in support of the plaintiff's contention. These however relate to the general intent of the amend- [fol. 16] ment rather than to the particular provision now in ques-

tion. In a letter however to the Chairman of the House Committee on Interstate and Foreign Commerce written by the Attorney General, transmitting a draft of the proposed amendment, the latter in part said;

Under subsection (1) thereof will be permitted the return of property to all American citizens wherever resident, to citizens of Turkey and Bulgaria, and to persons whose property was sequestered because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries).

The proviso last mentioned seems to be in line with subsection (6) as interpreted by the defendants, for the latter results in preventing a return of property to corporations whose real owners, the stockholders, are, whether entirely or in part, citizens of enemy countries. However we may say that the interpretation of paragraph (6) seems to us to be sufficiently clear to make it unnecessary to rely for assistance upon contemporaneous documents. On the other hand there is nothing unreasonable in the result which would follow from the adoption of the defendants' interpretation. It may well be said that the stockholders of a foreign corporation are virtually the corporation itself for the purposes of the act, and that if they are enemies the corporation should be regarded as such. It is true that the provision as thus interpreted has the result of classifying a corporation as an enemy even if only one stockholder out of many should be an enemy, and this may be said to be a drastic rule. But it would be difficult in practice to draw any other dividing line in such cases. Furthermore the President was empowered by the act to license corporations of this kind when he saw fit, and thereby prevent a seizure of their assets under the act. (Sections 4 and 5.)

It is suggested in behalf of the plaintiff that under the phraseology of the act Congress in appropriate cases designated the corporations as alien enemies or otherwise according to their own nationality and [fol. 17] not that of their stockholders. It may be noted however that corporate stock in domestic corporations when held by enemies, was seized by the Custodian like other property, and there is no reason to doubt that stock similarly held in foreign corporations would likewise have been seized, if found in this country and capable of being reduced to possession.

It may be added that when the United States permits a suitor to sue it in its courts, the case brought cannot be sustained unless both in form and substance it comes within the terms of the consent.

Affirmed with costs.

[fol. 18] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DISSENTING OPINION

Mr. Justice ROBB, dissenting:

The result in this case very largely depends upon whether this remedial legislation shall be liberally or narrowly interpreted.

In Section 2 (*c*) of the original Act of October 6, 1917, it is provided that the word "person" shall include corporations, and a reading of the Act and the amendment leaves little room for doubt that the word "citizen" likewise was intended to include and does include corporations. It follows, therefore, that under subsection (1) of Section 9 (*b*) of the amendatory Act of June 5, 1920, the Swiss National Insurance Company, appellant here, is brought within the scope of this remedial legislation.

I see nothing inconsistent with this view in the provisions of subsection (6). Under that subsection a German or Austrian corporation whose stock was entirely owned by citizens of other countries is brought within the provisions of the Act. It is plain that such corporations would not be within the provisions of subsection (1). Subsection (6), therefore, like the other subsections of Section 9, was intended to broaden rather than narrow the scope of the Act. In other words, its intent was to add and not to exclude a class.

Under the view of the majority, a Swiss Corporation with a capital stock of $1,000,000.00 would be excluded from the benefit of the Act if one share of its stock happened to be owned by a German citizen. Such a result could not have been contemplated by Con-[fol. 19] gress, and I do not think this legislation need be given an interpretation that would make it possible.

Believing that appellant, as a citizen of Switzerland, is entitled to the benefit of this Act, I am constrained to dissent from the opinion and judgment of the Court.

[fol. 20] Monday, May 7th, A. D. 1923.

* * * * * * *

[Title omitted]

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

DECREE

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Judge George Ewing Martin, May 7, 1923.

Mr. Justice Robb dissenting.

Judge George Ewing Martin of the U. S. Court of Customs Appeals sat in this case in the place of Justice Van Orsdel.

[fol. 21] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR ALLOWANCE OF APPEAL—Filed July 6, 1923

Now comes the appellant in the above cause, and moves the Court for the allowance of an appeal to the Supreme Court of the United States, and respectfully shows to the Court:

First. The above case was a procedure in equity, originating in the Supreme Court of the District of Columbia, and appealed from that Court to the Court of Appeals of the District of Columbia. The case arose under the Trading with the Enemy Act, approved October 6, 1917, as amended June 5, 1920, and involved a construction of this law of the United States, and the constitutionality of a portion of the Act.

Second. Appellant contended that, under this Act it was entitled to the return of its property, in the hands of the Alien Property Custodian. Appellees denied the correctness of this contention. The Court sustained the appellees, by its decree filed May 7, 1923.

Third. The action of the Court of Appeals was final, and the third paragraph of Section 250 of the Act to Codify, Revise and Amend the laws Relating to the Judiciary, approved March 3, 1911, gives the right of appeal to the Supreme Court of the United States where the Constitutionality of any law of the United States is involved, and the sixth paragraph of said section gives the right of appeal to the Supreme Court of the United States in cases in which the construction of any law of the United States is drawn in question.

[fol. 22] Appellant requests that the bond required for the appeal be fixed at Three Hundred Dollars.

Hoke Smith, Attorney for Appellant.

Service of copy of the above motion is hereby acknowledged, this 6th day of July, 1923.

(S.) W. D. Hughes, For the Solicitor General.

[File endorsement omitted.]

[fol. 23] Wednesday, July 11th, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER ALLOWING APPEAL

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be, and the same is hereby allowed, and the bond for costs is fixed in the sum of three hundred dollars.

[fol. 24] BOND ON APPEAL—For $300.00; approved, Robb, J.; filed July 25, 1923 [omitted in printing]

[File endorsement omitted.]

[fol. 25] CITATION AND SERVICE—Filed July 25, 1923

UNITED STATES OF AMERICA, *ss:*

To Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Swiss National Insurance Company, Limited, a corporation, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this — day of July, in the year of our Lord one thousand nine hundred and twenty-three.

Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Service accepted this 25 day of July A. D. 1923.

Peyton Gordon, U. S. Attorney.

[File endorsement omitted.]

[fol. 26] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 25, 1923

The Court of Appeals having entered a decree against the appellant in the above stated case, and the appellant having filed a motion for the allowance of an appeal to the Supreme Court of the United States, which has been approved by the Court, the appellant presents this its assignment of errors:

First. The Court erred in affirming the judgment, order and decree of the trial judge.

Second. The Court erred in its construction of the Trading with the Enemy Act approved October 6, 1917, 40 Stat. L., 411, as amended June 5, 1920, 41 Stat. L., 977, and in denying to appellant the return of its property described in the bill of complaint.

Third. The Court erred in holding that Subsection 1 of Section 9-*b* contained in the amendment of June 5, 1920, did not include corporations, and did not authorize the return to appellant of the property described in appellant's bill of complaint.

Fourth. The Court erred in holding that Subsection 6 of Section 9-*b* of said Act excluded corporations from Section 3, and prevented appellant from recovering the property described in appellant's bill of complaint.

Fifth. The Court erred in holding that if Subsection 1 included neutral corporations, there remained none for subsection 6 to refer to or govern.

Sixth. The Court erred in its construction of Subsection 1 and Subsection 6 of Section 9-*b* of said Act, and in its judgment and decree based upon said construction denying to appellant the right to recover its property described in its bill of complaint.

[fol. 27] Seventh. The Court erred in holding that the interpretation of paragraph 6 was sufficiently clear to make it unnecessary to rely for assistance upon contemporary documents and upon the report of the Committee on Interstate and Foreign Commerce of the House of Representatives.

Eighth. The Court erred in holding that Section 9-*a* of the Trading with the Enemy Act, as amended, and the Trading with the Enemy Act as a whole authorized the retention of the property of appellant described in its bill of complaint, after appellant had ceased to do business within enemy territory.

Ninth. The Court erred in holding that the Trading with the Enemy Act authorized the retention by the Custodian or the Secretary of the Treasury of the property of appellant described in its

bill of complaint after the war with Germany had been officially declared at an end.

Tenth. The Court erred in holding that the Trading with the Enemy Act authorized the retention by the Custodian or the Secretary of the Treasury of the property of appellant described in its bill of complaint after the appellant had ceased to do business within enemy territory.

Eleventh. The Court erred in holding that under the Constitution of the United States and principles of international law the Custodian could retain the property of a neutral corporation after the war had been officially declared at an end and after the neutral corporation had discontinued its business within enemy territory.

Respectfully submitted, Hoke Smith, Attorney for Appellant.

[File endorsement omitted.]

[fol. 28] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD ON APPEAL—Filed July 25, 1923

The Clerk in the preparation of the Transcript of Record on Appeal to the Supreme Court of the United States in the above entitled cause will include the following, to wit:

1. Transcript of Record.
2. Argument of Cause.
3. Opinion.
4. Dissenting Opinion.
5. Decree.
6. Petition for Appeal to Supreme Court of The United States.
7. Order Granting Appeal and Fixing Amount of Bond.
8. Bond.
9. Citation with Acceptance of Service.
10. Assignment of Errors.
11. This Designation.

Hoke Smith, Attorney for Appellant.

[fol. 29] [File endorsement omitted.]

[fol. 30] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered 1 to 28, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of Swiss National Insurance Company, Limited, a corporation, Appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, No. 3842, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fifth day of July, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,774. District of Columbia Court of Appeals. Term No. 464. Swiss National Insurance Company, Limited, appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States. Filed July 27th, 1923. File No. 29,774.

No. 132

IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

SWISS NATIONAL INSURANCE COMPANY, A CORPORATION,
Appellant,

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES, *Appellees.*

BRIEF FOR APPELLANT.

HOKE SMITH,
Attorney for Appellant,
906 Southern Bldg.,
Washington, D. C.

October 9, 1924.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

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SWISS NATIONAL INSURANCE COMPANY, A CORPORATION,
Appellant,

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES, *Appellees.*

BRIEF FOR APPELLANT.

Appellant, the Swiss National Insurance Company, filed a bill of complaint in the Supreme Court of the District of Columbia on November 28, 1921, against the Alien Property Custodian and the Treasurer of the United States, for the purpose of recovering certain bonds taken over by the Alien Property Custodian.

The Supreme Court of the District of Columbia sustained a demurrer to this bill, and its decision was affirmed by the Court of Appeals of the District of Columbia, Mr. Justice Robb dissenting. This is an appeal from that decision.

THE BILL OF COMPLAINT.

The bill alleges that appellant was a corporation duly incorporated under the laws of Switzerland, and that it was a citizen of Switzerland, with its principal office at Basle, Switzerland; that its charter authorized it to do a reinsurance business in Switzerland and elsewhere; that, in 1910, it conducted a reinsurance business in the United States, and that it continued to conduct this business, under a license issued to it by the Government of the United States, after the United States entered the World War, but that on or about the 18th day of November, 1918, its property consisting of over $1,000,000 of bonds, which it had been required to deposit as security for its policyholders in the United States, was taken over by the Alien Property Custodian.

The bill alleges further that the Swiss Republic has at all times been a friendly neutral; and that the property of the plaintiff was taken over upon the ground that, while a Swiss corporation, it conducted a reinsurance business in Germany.

The bill further alleges that the war, ended on the 6th day of November, 1921, and that appellant had discontinued its business in Germany in 1921.

APPELLANT'S CONTENTIONS.

Appellant insists, 1st, that Subsection (1) of Section 9 (b) of the Act approved June 5, 1920, authorized and required the return to appellant of the property described in the complaint; 2nd, that appellant having discontinued its German business, ceased to be an enemy, and peace having been declared with Germany,

it ceased to be an enemy; that for these reasons, under Section 9 (a), the return of the property described in the complaint was authorized and required.

SECTION 9 (b).

Section 9 (b) is an amendment to the Trading with the Enemy Act, approved June 5, 1920. It contains eight subsections, and authorizes the President or the Courts to deliver to those covered by these eight subsections their property, which had been taken over and held by the Alien Property Custodian.

Subsection (1) of Section 9 (b) is as follows:

> "A citizen or subject of any nation or state or free city, *other than Germany, or Austria, or Hungary, or Austria-Hungary,* and is at the time of the return of such money or other property hereunder, a citizen or subject of any such nation or or state or free city; or"

Subsection (6) of Section 9 (b) is as follows:

> "A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated *within any country other than the United States,* and was entirely owned at such time by subjects or citizens of nations, states, or free cities other than Germany or Austria or Hungary, or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or" (Italics ours throughout except as otherwise indicated.)

The issue between appellant and appellee grows out of these two subsections. We insist that the words: "*citizens or subjects,*" in (1) apply to and include corporations, provided they are corporations of nations

or states "other than Germany or Austria or Hungary or Austria-Hungary;" while (6) applies to "*a corporation incorporated within any coutry other than the United States,*" thus adding corporations organized in Germany, Austria, Hungary or Austria-Hungary, and that this subsection was clearly intended to add an additional class whose property was to be returned, rather than to restrict or limit in any sense Subsection (1).

The Act of June 5, 1920, was a remedial statute, intended to return property held by the Alien Property Custodian. Each of the subsections added property to be returned. Subsection (6) should be construed not at limiting (1) but as adding corporations who were citizens of Germany, Austria, Hungary or Austria-Hungary, if they were entirely owned by subjects or citizens of nations, states or free cities other than Germany or Austria or Hungary or Austria-Hungary.

The House report declared that the measure was clearly set forth in the communications from the Attorney General and the Secretary of State. The ordinary meaning of the language used in (1) and (6) produce no conflict, and the statement of the purpose of the legislation by the Secretary of State and the explanation of the Attorney General can, we urge, leave no doubt as to the fact that Congress meant to return all the property of citizens of neutral countries, and the word "citizens" by the interpretation of the Attorney General under the Act, included corporations.

The word "citizen" contained in subsection (1) has been held by this Court, by numerous state courts, by the Department of Justice, and in all our diplomatic correspondence, to include corporations. Subsection (1) limits these corporations *to citizens and subjects*

of other than enemy countries. Subsection (6) *includes corporations of enemy countries,* and therefore adds an additional class whose property was to be returned, not covered by (1).

The report of the House Committee stated that the passage of the bill was recommended on account of the letters of the Secretary of State and of the Attorney General, which were made a part of the report. The Secretary of State requested the return of *all property belonging to nationals, citizens or subjects of neutral or friendly countries.* He called attention to the fact that neutral and allied states had been pressing for the release of such property, and expressed the opinion that our Government should no longer retain this property.

The Attorney General stated, in his letter to the Committee that he had prepared the bill under consideration *for the purpose of carrying out the request of the Secretary of State,* and that Section 9 (b) provided for the return *of all enemy property* except that held by *persons* who were in fact *bona fide* citizens of Germany, Austria, Hungary or Austria-Hungary. He also added that subsection (1) permitted the return of the property of all persons *whose property had been sequestrated because of the fact that they were doing business within enemy countries,* provided they were not citizens of enemy countries.

Appellant certainly was not a citizen of an enemy country. It was a citizen of Switzerland, and Congress passed the bill upon the request of the Secretary of State, explained by the Attorney General to have been prepared by him to carry into effect this request that all property of neutrals be returned.

THE TERM "CITIZEN" INCLUDES CORPORATIONS.

In the *United States and Sioux Nation of Indians v. Northwestern Express, Stage and Transportation Company,* 164 U. S. 686, 41 Law Ed. 599, a corporation created by the laws of the State of Minnesota, brought suit for personal property destroyed by Indians of the Sioux tribe. The Act under which the suit was brought authorized the court to adjudicate "all claims for property of citizens of the United States taken or destroyed by Indians."

The headnote reads, "A corporation of a State is a citizen of the United States within the meaning of the Act of Congress of March 3, 1891, providing for the adjudication of claims of citizens of the United States for property taken or destroyed by Indians.

In the case of *Ramsey v. Tacoma Land Company,* 196 U. S. 359, 49 Law Ed., 513, the language of the statute under consideration was "a citizen of the United States or persons who have declared their intention to become such citizens." The court held that the term "citizen" included corporations.

STATE COURTS.

The authorities from the several states are so unanimous in holding that the word "citizen" when used in a statute includes corporations, the conclusion is irresistible that the Members of Congress from the several states, and the Senators from the various states, a majority of whom are lawyers, intended the word "citizen" in subsection (1) to include corporations.

In Oregon, there is a state law providing that the

purchasers of state land *shall* be citizens of the United States, or those who shall have declared their intention of becoming such, and *shall be eighteen years of age.* It might be from this language that the legislature had in mind only natural persons, but in *Beaver Lumber Co. v. Barker,* 74 Ore., 535,, the Court held that these provisions included a domestic corporation, and that a corporation was such a citizen as was entitled to purchase land.

In Rhode Island, *Greenough vs. Board of Police Commissioners of the Town of Tiverton,* 30 R. I., 212, the Court held that corporations conducting the liquor business are "citizens resident within this state for the purposes set forth in the license laws, providing that licenses 'may be granted to citizens resident within this state.' "

In Utah, *Wilson, et al. vs. Triumph Consolidated Mining Co.,* 19 Utah, 67, the Court said: "A corporation organized under the laws of Utah is a citizen of the state."

There are numberless decisions holding that the word "citizen" includes corporations, but we do not care to burden the record or occupy the time of the Court by quoting from more of them. The following pertinent cases are cited: *Hobbs vs. Manhattan Insurance Co.,* 56 Maine, 417; *Mining Co. vs. First National Bank,* 7 Montana, 530; *Quigley vs. Central Pacific Railroad,* 11 Nevada, 350; *Knarr vs. Insurance Co.,* 25 Wisconsin, 143 *Martin vs. Mutual Life Insurance Co. of New York,* 105 Mass., 141; *Herryford vs. Aetna Insurance Co.,* 42 Mo., 148; *Western Union vs. Dickinson,* 40 Ind., 444; *Stevens vs. Phoenix Insurance Co.,* 41 N. Y., 150.

These authorities and many others that could be

cited recognize the fact that subsection (1), using the word "citizen," includes corporations and declares in effect that a corporation organized under the laws of Switzerland should have returned to it the property in the hands of the Custodian.

OPINION OF ACTING ATTORNEY GENERAL TAFT.

Honorable William H. Taft, Acting Attorney General, was called upon to construe the Act of March 3, 1891, which was "An Act to Provide Mail Service Between the United States and Foreign Ports, and to Promote Commerce." The Act required the service to be performed in American-built ships *owned and officered by American citizens.* Acting Attorney General Taft stated the question as follows:

> "Is a corporation organized under the laws of any state in the United States an American citizen within the meaning of the Act?"

He answered the question in the affirmative, citing *McKinley vs. Wheeler,* 130 U. S., 630. He also cited "the Queen" on the prosecution of the *Pacific Steam Navigation Co. vs. Arnoud* (25 Law Journal U. S. Part II, Com. Law No. 50), an English case holding that a British statute which provided that no vessel should be registered under it unless the vessel wholly belonged to Her Majesty's subjects, did not prevent the registration of a vessel owned by a British corporation, although some of the members of the corporation were foreigners.

The same view was sustained in the following cases:

Fritz Schulz, Jr., Inc., vs. Raines, 164 N. Y. S. 454, holding that a corporation organized under the laws of New Jersey, although its stockholders were German citizens, was nevertheless a distinct legal entity from the alien owners of its stock, and it was not in the position of an alien enemy within the meaning of the proclamation of the President of the United States of April 6, 1917.

Also *Continental Tyre etc., Co., Ltd., vs. Daimler Co., Ltd.,* 1 K. B. 893, 5 B. R. C. 304, holding a company incorporated in England, all the shares of which, except one, were held by German subjects and residents, and all the directors of which were Germans, nevertheless an English Company, and not an alien enemy.

The Courts have not only recognized the term "citizen" as including corporations, but they have gone further and recognized the term "citizen of the United States" as including corporations of the respective states. They have also held that the citizenship of a corporation could not be affected by the citizenship of its stockholders; and that the corporation would retain the nationality and citizenship of the country from which it derived its charter, without regard to the nationality or citizenship of its respective stockholders.

The only cases in which this Court has failed to recognize the rule that "citizen" includes corporations were those growing out of the construction of the Fourth Article or the Fourteenth Amendment to the Constitution of the United States.

In the Fourth Article, the language used is:

> "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The "privileges and immunities" here being dealt with are those accorded in all of the states to their resident citizens. This provision of the Constitution, therefore, declares that non-resident citizens shall be accorded the "privileges and immunities" which the resident citizens of all of the states received. The "privileges and immunities" covered by this article were limited to those given in the several states to their resident citizens. A special privilege granted by any state to a citizen, whether a natural person or an artificial person, was not included in the "privileges and immunities" covered by this provision, because such a special privilege or immunity was not a privilege or immunity given to citizens in "the several states."

In the Fourteenth Amendment, provision is made that no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. The words "privileges and immunities" are here again used as they were used in the Fourth Article, and the Court has given to them the same meaning which was given them under the Fourth Article. Practically the same language is used in the Fourteenth Amendment which was used in Article Four. See *Paul vs. Commonwealth of Virginia*, 8 Wall., 168, 19 Law Ed., 357 and 360.

While this Court has placed the meaning upon "privileges and immunities" to which we have referred, it has also held that the Fourteenth Amendment includes corporations, in its denial to any state of the right to deprive any person of property without due process of law, or to deny to any person within its jurisdiction the equal protection of the law. *North-*

western Life Insurance Co. vs. Riggs, 203 U. S., 243 (51 Law Ed., 168); *Stover, Bates & Co. vs. Walsh,* 226 U. S., 112 (57 Law Ed., 146).

DIPLOMATIC TREATMENT OF CORPORATIONS.

The word "citizen" has not only been held by the courts to include corporations, but so far as we have been able to find, it has universally been so treated in our diplomatic correspondence.

In *Moore's International Law Digest,* Vol. III, a quotation is given from a letter by Mr. Hay, Secretary of State, to the Secrtary of War, March 27, 1900. The subject under discussion was the status of a corporation which was chartered in Porto Rico as a Spanish corporation before the peace treaty between the United States and Spain which annexed Porto Rico to the United States. Mr. Hay stated that as a result of annexation, this Spanish corporation became "as between the United States and other governments, an American citizen."

Moore's International Law Digest, Vol. 6, page 641, discussing the interposition by a government in behalf of a corporation of its creation, lays down the rule as follows:—

> It is well settled that a government may intervene in behalf of a company incorporated under its laws or under the laws of a constituent state or province. In such case the act of incorporation is considered as clothing the artificial person thereby created with the nationality of its creator, without regard to the citizenship of the individuals by whom the securities of the company may be owned.

On page 642 of the same volume, Mr. Moore cites the action of Mr. Olney, Secretary of State, in an instruction to Mr. Sleeper, Minister to Colombia, Feb. 24th, 1897. In this case an American corporation published The Panama Star and Herald, which was suspended in Colombia by a military order. Mr. Olney calls attention to the fact that the Panama Star and Herald had been incorporated under the laws of the State of New York, and as such was entitled to the protection of the United States. The Colombian Government had accorded the corporation the privileges authorized by law to foreign corporations. The Colombian Government set up that the paper was being published by its vice-president, who was a resident of Panama and a citizen of Colombia.

Secretary Olney insisted that the citizenship of the corporation was controlled by the nationality of its creation; that the nationality of the stockholders did not affect the status of the corporation, and finally said:—

> The Star and Herald corporation is a legal "person" in contemplation of law, and is not to be deprived of its just compensation and damages by technicalities unknown to the law.

On page 646, of the same volume, Mr. Moore cites action substantially similar by Mr. Frelinghuysen, Secretary of State.

On page 644 of the same volume Mr. Moore cites the action of Mr. Seward, Secretary of State, in connection with the steamer Antioquia. The corporation owning this steamer was organized under the laws of Colombia. The steamer was seized by the Colom-

bian Government. There were a number of American stockholders who called upon the Secretary of State to intervene in their behalf. Mr. Seward did not intervene; he took the position that an American citizen "as a corporation had no individual property in the chattels or the credits of the corporation."

Mr. Seward then referred to a decision of the Supreme Court of the United States, and to a decision of an English Court sustaining the view expressed, and declared that the company owning the Antioquia as an entity was to be assimilated to a citizen of Colombia. The decision of the Supreme Court of the United States to which Mr. Seward referred was the *Bank Tax case*, 70 U. S., 584, where Mr. Justice Nelson uses the following language:—

> The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter, and for the purposes for which it was created can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law and will be found in every work that may be opened on the subject of corporations. A strict exemplification may be seen in the case *The Queen v. Arnoud*, 9th Ad. and Ell. N. S. 806. The case related to the registry of a ship owned by a corporation. Lord Denman observed: "It appears to me that the British corporation is, as such, the sole owner of the ship. The individual members of the corporation are no doubt interested in one sense in the property of the corporation, as they may derive individual benefits from its increase or loss from its decrease; but in no legal sense are the individual members the owners."

The State Department of the United States has therefore not only recognized that the term "citizen" includes corporations, but it has gone further, and refused in any way to recognize the nationality of the stockholders of the corporation. It has forced foreign nations to recognize the citizenship of a corporation created by a state of the United States, without regard to the fact that some of the stockholders of the corporation were citizens of the foreign nation. Where a corporation was created by a foreign government, our Government has declined to intervene for the protection of rights of citizens of the United States who were stockholders in that foreign corporation.

Under the course pursued by our Government, if our Government had suggested that a corporation incorporated by the Republic of Switzerland should have been treated as an Alien Enemy because a portion of its stockholders were German, the Swiss Government could well have replied: "You are disregarding the rule established by your own State Department, and you must accord to a Swiss corporation, as a citizen of Switzerland, the same rights which you demanded for a corporation created by the State of New York."

"CITIZEN" INCLUDES CORPORATIONS AND PURPOSE OF LAW-MAKING POWER MUST BE FOLLOWED.

In *U. S. v. Northwestern Express Co., supra,* the Court did not hesitate to hold that the word "citizen" included corporations. The question of doubt was whether the words "citizens of the United States" included corporations incorporated by the individual states. On page 688 of this opinion, the following statement is made by the Court:

> "Congress has frequently in its legislation, as also the treaty-making power, used the words 'citizens of the United States' in the broadest sense, and as embracing corporations created by state law. * * * By the French spoliation act of January 20, 1885, authority was conferred on the Court of Claims to adjudicate upon certain claims of 'Citizens of the United States or their legal representatives.' The Court of Claims, however, made no distinction in the exercise of jurisdiction between the claims of natural persons or of corporations. * * * Congress appropriated for the payment of judgments thus rendered in favor of corporations. * * * In various treaties entered into by the Government, the term 'citizens of the United States' has been used in the general sense already referred to."

The Court cited treaties with Mexico, Venezuela, Peru, Great Britain and with France, which classed "corporations, companies or private individuals" as "citizens of the United States," and then stated:

> "With this frequent use by Congress of the word 'citizen' as embracing a corporation, it remained only to ascertain from *the nature of the act* whether the words were used in the act in their *general signification.*"

The Court also, in this opinion, referring to the fact that the Act gave the right to sue to citizens of the United States, while the plaintiff was a corporation created by one of the states, said:

> "These considerations give rise to an ambiguity which we must solve, not by reference to a mere abstract technicality, but by that cardinal rule which commands that we seek out and follow the

evident purpose intended to be accomplished by the law-making power."

THE REPORT OF A CONGRESSIONAL COMMITTEE WILL BE RESORTED TO IN THE CONSTRUCTION OF AN ACT OF CONGRESS.

This Court, in *U. S. v. St. Paul, Minneapolis and Manitoba Railway Company*, 247 U. S. 310, expressly ruled that the report of a Congressional Committee may be resorted to in aid of the construction of an Act of Congress.

In that case, the Court said:

> "But the *reports of a Committee*, including the bill as introduced, changes made in the frame of the bill in the course of its passage, and statements made by the committee chairman in charge of it, stand upon a different footing, and *may be resorted to* under proper qualifications."

The Court then cited *Blake v. National City Bank*, 23 Wall., 307, 23 L. E. 120; *Church of the Holy Trinity v. U. S.*, 143 U. S. 457,, 36 L. E. 226; *Dunlap v. U. S.*, 173 U. S., 65, 43 L. E. 616; *Binns v. U. S.*, 194 U. S., 486, 48 L. E., 1087; *Johnson v. Southern P. Co.*, 196 U. S., 1, 49 L. E., 363; *Pennsylvania R. Co. v. International C. M. Co.*, 230 U. S., 184, 57 L. E., 1446, and the *Five Per Cent Discount Cases*, 243 U. S., 97, 61 L. E., 617.

The Court went on to say:

> "The remarks of Mr. Lacey, and the amendment offered by him, in response to an objection urged by another member during the debate, were in the nature of a supplementary report of the committee; and as they related to matters of common

> knowledge they may very properly be taken into consideration as throwing light upon the meaning of the proviso; and not for the purpose of construing it contrary to its plain terms, but in order to remove any ambiguity by pointing out the subject-matter of the amendment. This is but an application of the doctrine of the old law, the mischief, and the remedy."

In *Church of Holy Trinity, supra,* Mr. Justice Brewer, delivering the opinion of the Court, said:

> "Another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the Court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. * * * We find, therefore, that the title of the Act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the *reports of the Committee of each house,* all concur in affirming that the intent of Congress was simply to stay the influx of this cheap, unskilled labor."

Congress passed this Act to relieve the strain upon our diplomatic relations caused by the retention of neutral property. This was a remedial statute of international scope, and Congress clearly intended to comply with the requests of the Secretary of State, who sought to return at once property of all neutral corporations.

REPORT OF HOUSE COMMITTEE GIVES THE PURPOSE OF CONGRESS IN ADOPTING SUBSECTION (1).

The House Committee report contained a letter from the Attorney General which called attention to the fact that Subsection (1) returned the property of all "persons" (this included corporations by the express definition of the trading with the enemy act) of countries with which we were not at war, and especially of those whose property had been taken over because they did business in enemy countries.

The report of the House Committee further stated:

> "The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State."

The bill passed the House on account of this report, and because the Secretary of State was urging action to return property of neutral nationals. There was very little discussion of the bill in the House. See Cong. Rec., Vol. 12, 66th Cong., p. 9033, *et seq.* In the Senate the bill was reported by the Judiciary Committee the same day it reached the Senate. A bill quite similar had been introduced in the Senate a short time previous, but this House Bill was passed by the Senate the day it came over from the House with no written report, and without amendment. The Senate action rested on the House Report containing the letters of the Attorney General and the Secretary of State, and the recommendation of the State Department and Department of Justice. (See Congressional Record, 2nd Session, 66th Cong., pp. 9115-16-17-18.)

Section 9 (b) of the act of June 5th, 1920, was sent to Congress with letters from the Secretary of State and the Attorney General, addressed to the Committee on Interstate and Foreign Commerce. In the report of the Committee on Interstate and Foreign Commerce of *the House of Representatives* these letters were copied in full. The Committee recommended favorable action upon Section 9 (b) for the reasons set forth in these letters.

The *purpose of subsection (1)* was discussed, but no reference to subsection 6 was made in the report of the Committee, or upon the floor of either House. The report of the Committee shows beyond question that *subsection (1) of Section 9 (b) was intended to apply to corporations,* and was intended to return *all property of neutrals* where taken over upon the ground that *they did business in enemy countries.*

REPORT OF HOUSE COMMITTEE SUSTAINS CONSTRUCTION OF SUBSECTION (1), GIVING RIGHT TO RETURN OF APPELLANT'S PROPERTY.

The Committee report itself declared

> "The purpose of the above bill is to *amend Section 9* of the trading-with-the-enemy act so as to *facilitate the return* on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him under the provisions of the above act. * * *
>
> "In view of the fact that nineteen months have elapsed since the signing of the Armistice, and

during this period an actual state of peace has existed, there have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian. * * *

"The United States while holding approximately $556,000,000 worth of private property which it found in this country belonging to individual citizens of enemy countries residing in their country at the outbreak of the war and still residing there, does not intend to confiscate this property. *It was the intention of Congress when the property was taken that it should be held in custody during the war and that after the war the property or its proceeds should be returned to the owners.* It has never been the purpose or the practice of the United States to seize the private property of a belligerent to pay our Government's claims against such belligerent. *Such practice is contrary to the spirit of international law throughout the world.* The *reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State.* For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe. For these reasons the committee favorably reports the bill as above amended." (The amendments made in the committee to the bill submitted to them by the Attorney General were of minor importance and did not affect Section 9 (b), (1) or (6).)

LETTERS OF SECRETARY OF STATE AND ATTORNEY GENERAL

The letter of the Attorney General contained the following statement:

"Office of the Attorney General,
Washington, D. C., May 11, 1920.

Hon. J. J. Esch,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

Sir: Referring to my letter of March 31, concerning certain legislation amendatory to section 9 of the trading with the enemy act to be submitted to your committee at the suggestion of the Secretary of State, as stated to you in my letter of April 22, through inadvertence the draft of the proposed legislation was not inclosed in the letter of March 31, and thereafter *the Secretary of State requested that the matter be held up so that certain additional relief,* which he considered necessary to give, might be incorporated in the proposed amendment. *These suggestions he has since furnished to me,* and *the inclosed draft of a bill, amending section 9, has been drawn with a view to meeting these suggestions. I am also inclosing a copy of his letter to me, dated May 5, 1920, in order that your committee may have the benefit of the information which it contains.*

"The relief called for by this letter required extensive changes in the text of the bill which was designed to accompany my letter of March 31, and accordingly I will reanalyze its provisions, and *indicate the change which it would make in existing law.* * * * (The next portion of the letter has reference to Section 9 (a).)

"*Subsection (b) of the proposed amendment provides, in substance, for the return of all enemy*

property, except that held by persons who are in fact bona fide subjects, or citizens of Germany, Austria or Hungary.

"Under subdivision (1) thereof will be permitted the return of property to all American citizens, wherever resident, to citizens of Turkey and Bulgaria, *and to persons whose property was sequestrated because of the fact that they were doing business within enemy territory* (provided they are not citizens of enemy countries.") (The Attorney General's letter discussed also subsections (2), (3) and (4), referring to them as sub-divisions but none of the other subsections of section 9 (b).)

The letter of the Secretary of State of May 5, 1920, contained the following statement:

"Department of State,
Washington, May 5, 1920.

"The Attorney General.

"Sir: I have the honor to refer to my letter of March 23, 1920, concerning an amendment to section 9 of the trading with the enemy act, authorizing the release of property taken over by the Alien Property Custodian belonging to enemy persons who, by virtue of the peace treaties, become citizens, subjects, or nationals of countries other than Germany, Austria or Hungary. In addition to the classes of property referred to therein, I believe that any amendment to section 9 should also contain provisions permitting the return *of all property which*, at the time it was taken over by the Alien Property Custodian, *belonged to nationals, citizens, or subjects* of the United States, as well as those of *neutral or friendly states* and of Turkey and Bulgaria.

"The *various neutral* and allied states whose *nationals'* property has been taken over by the

Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or otherwise, for some time *have been pressing for the release of such property.* It appears that the Department of Justice has ruled that, under the trading with the enemy act in its present form, it is not in a position to release this property. During the actual conduct of hostilities it may have been advisable to retain such property. In view, however, of the cessation of hostilities, this department feels that the Government should *no longer retain this property,* even though a technical state of war may still exist. To do so would undoubtedly create an unfavorable impression in the states concerned, *and would be of no advantage to the United States in its negotiations with enemy countries."*

The letter from the Secretary of State of May 21, 1920, was addressed to Hon. J. J. Esch, Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, and contained the following statement:

The draft, it is understood, is largely based on representations from this department, made in view of the fact that the Attorney General holds that under the trading-with-the-enemy act, in its present form, he is unable to release property to owners, *who when it was taken over were* included, *for any reason,* in the *terms "enemy"* or "ally of enemy," as used in the act and consequently, in spite of *strong representations by various neutral* and associated Governments, it has been impossible to return the property of *their nationals,* which it would appear this Government *should no longer retain.* To longer retain property of this character can hardly fail to unfavorably affect the rela-

> tions of this Government with the Governments concerned, and I am strongly of the opinion that Section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property. I hope that it will be possible to give favorable consideration to the matter, and that an amendment of the act can be passed before the recess of Congress.

The Committee report contained the statement that the purpose of the bill was to amend Section (9) of the trading with the enemy act, to facilitate the return by the Alien Property Custodian of money or property conveyed to or seized by him. It called attention to the fact that an actual state of peace had existed for nineteen months, and that it had never been the purpose or practice of the United States to seize private property of a belligerent to pay our Government's claims against the belligerent. It further stated that the reasons for the pending measure were clearly set forth in the accompanying communications from the Attorney General and the Secretary of State, which communications were made a part of the report.

The letter of the Secretary of State to the Attorney General, of May 5, 1920, expressed the opinion that an "amendment to Section (9) should also contain provisions permitting *the return of all property* which, at the time it was taken over by the Alien Property Custodian *belonged to nationals, citizens or subjects* of the United States *as well as those of neutral or friendly states.* It called attention to the fact that various neutral and allied states, whose nationals' property had been taken over by the Alien Property Custodian,

had for some time been pressing for the release of such property, and that, while during the actual conduct of hostilities it may have been advisable to retain such property, the hostilities having ceased the State Department felt that *the Government should no longer retain this property*, even though a technical state of war existed; and "*to do so would undoubtedly create an unfavorable impression in the states concerned*, and *would be of no advantage to the United States in its negotiations with enemy countries.*"

The Secretary of State therefore asked that *all* property belonging to nationals, citizens or subjects of neutral or friendly states should be returned, and he requested the Attorney General to frame legislation amending Section (9) which would carry his suggestions into execution. How could a bill be framed which returned *all property belonging* to *nationals, citizens or subjects of neutral states* unless that bill covered the property of appellant?

The Attorney General in his letter stated that his amendment of Section (9) had *been drawn with a view of meeting the suggestions* of *the Secretary of State*, and as those suggestions required extensive changes in the existing bill, he proceeded to analyze its provisions.

To carry out the suggestions of the Secretary of State, it was necessary that the amendment should provide for the return of *all* property belonging to nationals, citizens or subjects of neutral states.

Of Section 9 (b) *the Attorney General* declared that the purpose was to provide, in substance, *for the return of all enemy property except that held* by *persons*

who are in fact bona fide subjects or citizens of Germany, Austria, Hungary or Austria-Hungary.

Congress was therefore advised that the bill he submitted would return *all enemy property* except that held by "persons" who were in fact subjects or citizens of Germany, Austria, Hungary or Austria-Hungary.

Appellant was not a subject or citizen of Germany, Austria, Hungary or Austria-Hungary, and therefore Congress was advised that this amendment would return to appellant its property.

The Attorney General then proceeded to discuss subsection (1), and declared that it would permit the return to *"persons"* whose property was sequestrated because of the fact that they were doing business in enemy countries, provided they were not citizens of enemy countries.

The Secretary of State had asked that all the property belonging to nationals, citizens or subjects of neutral states should be returned. The Attorney General declared that the bill he proposed would return this property.

Appellant was a national and citizen of a neutral state, and when the Attorney General advised Congress that this bill was drawn with a view to meeting this request, he advised Congress that the property of nationals, citizens and subjects of all neutral countries would be returned under this amendment.

When he stated that subsection (1) would permit the return to all "persons" whose property had been sequestrated because of the fact that they were doing business within enemy territory, he used the term

which, in the original Trading with the Enemy Act, was defined to include corporation.

The original act which was being amended provides that the word "enemy" should be deemed to mean, for the purposes of the act, "any corporation incorporated within such territory of any nation with which the United States is at war, or incorporated within any country other than the United States and doing business within such territory."

It furthermore provides that:

> "The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic."

So that the Attorney General, in stating that the bill, under subsection (1) provided for the return to "all *persons*" whose property was sequestrated because of the fact that they were doing business within enemy territory, expressly declared that *corporations* were included in subsection (1) for the act provides that the word "*persons*" should include corporations.

The Secretary of State had pointed out that various neutral and allied states whose nationals' property, by reason of their doing business in enemy territory, had been taken over by the Alien Property Custodian, had been pressing for the release of such property. The bill of complaint herein shows that the Swiss Government had been urging the release of the property of appellant, which is the subject of this action.

The Attorney General, therefore, in discussing Section (b) of the proposed amendment, declared that it

provided in substance for the return of all enemy property except that held by *persons* who are in fact bona fide citizens or subjects of Germany, Austria, Hungary and Austria-Hungary.

The Attorney General, in discussing subsection (1), not only used the word "persons," as synonymous with "citizens and subjects," but he stated that the property of all "persons" whose property was sequestrated because of the fact that they were doing business within enemy territory would be returned, provided they are not citizens of enemy countries.

The property of appellant was seized by the Alien Property Custodian after the Armistice, and after the United States Government had licensed it to do business up to that time, upon the ground only that it was doing business in Germany.

In the reference, therefore, by the Attorney General to Section 9 (b), he declared that it would provide for the return of all enemy property except that held by *persons,* which included corporations, under the definition of persons in this act, and in his discussion of subsection (1) he stated that it would return to all *persons,* which included *corporations,* their property which was sequestrated because of the fact that they were doing business within enemy territory. *In each one of these references, he included appellant, and declared that appellant's property would be returned, for appellant was certainly not a subject or citizen of an enemy country.*

Congress therefore passed this act after it had been definitely advised by the report of the House Committee that subsection (1) permitted the return of prop-

erty of corporations (persons) whose property was sequestrated because they were doing business within enemy territory. The word "citizens" in (1) was construed by the report to include corporations. The addition of the words: "provided they are not citizens of enemy countries" could have no effect upon this appellant, for the appellant was certainly not a citizen of Germany.

The House passed the bill upon the unanimous report of the Committee based upon the recommendations of the Secretary of State and the Attorney General. The discussion in each House applied almost entirely to the treatment of American women.

In the House, Mr. Johnson of Washington cited a case of a woman he thought should be taken care of. Mr. Esch, Chairman of the Committee, replied:

> "We tried to make the law cover as many cases as we could and in fact liberalized the bill as originally presented by shortening the date and eliminating the provisions with reference to having the marriage celebrated in the United States."

The amendments to the bill submitted by the Attorney General added by the House Committee were either those consisting of mere typographical changes or those liberalizing the bill, but no change was made in (1) or (6).

The Senate passed the bill sent to it by the House on the day that it was received in the Senate. On the floor of the Senate, explaining the bill, Mr. Brandegee, of the Judiciary Committee, said:

"Mr. President, the pending measure authorizing the restitution by the President of property taken from those who were technically alien enemies during the war has been most thoroughly considered by the Department of State, the Department of Justice and the Alien Property Custodian. In the Committee on the Judiciary for the last two days we have heard Assistant Secretary Polk, we have heard agents of the Department of Justice, and we have heard the Alien Property Custodian. * * *

"As between the alternative of leaving the entire subject in its present condition, with so much injustice outstanding for months longer, and the possibility that some money may be paid to some one that may not be entirely justified—as between those two horns of the dilemma, I believe in accepting the judgment of the departments of the Government which have given it so much consideration."

There were objections and criticisms in the Senate of some portions of the bill, but none of the subsections under consideration. Congress was about to adjourn, and the bill was passed without amendment. It was really passed by the Senate in view of the recommendations made by the Secretary of State and the Attorney General, and their recommendations are found in the report of the House Committee.

We do not think there is any ambiguity in the bill, but if there was ambiguity, the report of the House Committee upon it can be used to determine its true meaning, under the decision in *U. S. v. St. Paul, Minneapolis & Manitoba Ry. Co., supra*, and cases there cited. There can be no doubt as to what this report showed the bill was intended to accomplish.

SUBSECTION (6) DOES NOT LIMIT THE MEANING OF SUBSECTION (1).

Subsection (6) is relied upon by appellees to restrict the meaning of the word "citizen" in Subsection (1) and to prevent it from including "corporations." Subsection (6) reads:

> A partnership, association, or other unincorporated body of individuals *outside of the United States,* or a corporation incorporated within any country other than the United States, *and was entirely* owned at such time by subjects or citizens of nations, states, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

In the case of *Johnson v. Southern Pacific Company,* 196 U. S., 14, 49 Law Ed., 368, Chief Justice Fuller uses the following language:

> "The present case is that of an injured employee, and involves the application of the act in respect of automatic couplers, the preliminary question being whether locomotives are required to be equipped with such couplers. And it is not to be successfully denied that they are so required if the words 'any car' of the 2nd section were intended to embrace, and do embrace, locomotives. But it is said that this cannot be so, because locomotives were elsewhere, in terms, required to be equipped with power driving-wheel brakes, and that the rule that the expression of one thing excludes another applies. That, however, is a question of intention, and as there was special reason for requiring locomotives to be equipped with power driving-wheel brakes, if it were also necessary that locomotives should be equipped with automatic couplers, and the word 'car' would cover

> locomotives, then the intention to limit the equipment of locomotives to power driving-wheel brakes, because they were separately mentioned, could not be imputed."

This was the "air brake" case, intended to promote the safety of employees and travelers engaged in interstate commerce.

The Chief Justice said further:

> "Tested by context, subject matter, and object, 'any car' meant all kinds of cars running on the rails, including locomotives."

Following this principle, in the act under consideration the word "citizen," in (1), includes corporations, for the specific reference to corporations in (6) "tested by context, subject matter, and object" intended to be accomplished, will not deprive "citizens" of its general and ordinary meaning.

Appellees' Contention. The appellees contend that the specific mention of corporations in subsection (6) and the provision therein for the return of property to "a corporation incorporated within any country *other than the United States,* and was entirely owned at such time by citizens or subjects of countries other than Germany or Austria or Hungary or Austria-Hungary" limits the meaning of subsection (1) and excludes corporations from subsection (1).

Appellant's Contention. The appellant contends that subsection (6) added a class of corporations not included in subsection (1). Subsection (1) was limited to corporations other than those of Germany, Austria, Hungary or Austria-Hungary, while subsection (6)

extends the right of return to corporations "within *any* country other than the United States," and thereby extends the privilege of return to partnerships, associations, or other unincorporated bodies of individuals, or to corporations of Germany, Austria, Hungary or Austria-Hungary provided they are entirely owned, at such time, by subjects or citizens of nations other than Germany, Austria, Hungary, or Austria-Hungary.

Appellant contends that, while there were in the United States and Great Britain corporations all the stock of which was owned by German citizens, there were corporations in Germany, all the stock of which was owned by citizens of the United States, and by citizens of countries with which we were not at war. There were agencies who handled property in Germany, as trustees, the property being entirely owned by citizens of the United States, and by citizens of nations with which we were not at war. This property, while nominally belonging to these German agencies, was really owned by the citizens of the United States and friendly states. Appellant contends that subsection (6) was intended to authorize the return of property held by the Alien Property Custodian to these bodies of individuals and corporations provided the real owners were citizens of countries other than Germany, Austria, Hungary or Austria-Hungary.

Argument. If the contention of appellee is correct, and if Congress intended to exclude from the provisions of subsection (1) all corporations the stock of which was not entirely owned by subjects and citizens of nations other than Germany, Austria, Hungary or

Austria-Hungary, then it meant to say that no property of a corporation of a neutral country could be returned if one share of stock therein was owned by a citizen of any of the nations with which we had been at war.

In the case of appellant, Congress would have meant to say that although appellant had $1,000,000 worth of securities in the United States, in the hands of the Alien Property Custodian, if a German citizen owned $100 of its stock, then the property of appellant in the hands of the Alien Property Custodian could not have been returned to it. Such a purpose on the part of Congress would have been a radical change from all prior legislation.

The original Trading with the Enemy Act did not make an enemy out of a corporation of a neutral country on account of the status of its stockholders. It only made an enemy of such corporations if they were doing business in an enemy country, and the purpose of this classification was clearly to prevent money from being sent to Germany which might aid the enemy while we were actually engaged in the war.

If Congress did not see fit to class as an enemy a corporation of a neutral country on account of the fact that it had stockholders who were citizens of an enemy country even while the war was in progress, how can it possibly be supposed that Congress would classify such corporations, nineteen months after the war had ended, as enemies?

The act of June 5, 1920, now under consideration, was passed nineteen months after the war really ended. To suppose Congress then meant to extend the enemy

character of corporations of neutral countries and apply it when only one individual stockholder of such corporation was a citizen of an enemy is unthinkable.

In all of our Diplomatic correspondence and in all of our relations with foreign countries, we had recognized corporations as citizens or subjects of the countries in which they were incorporated. We had declined to regard the citizenship of the stockholders of such corporations as affecting in any way the citizenship of the corporations themselves.

Congress could very consistently have determined that corporations of enemy countries, if entirely owned outside of enemy countries should have their property returned, but it could not have provided that a corporation of a neutral country was not to be classed as a citizen of the country creating it without disregarding every prior position taken by our Government and our State Department.

The great bulk of the property of citizens of neutral countries taken over by the Alien Property Custodian because the owners were doing business in an enemy country consisted of the property of the corporations of these neutral countries. How can it possibly be supposed that Congress, in a bill prepared to return all the property of neutrals, should have, for the first time, intended to forbid the return of the property of corporations, even though only one stockholder of the corporation was a citizen of an enemy country? If Congress had intended that any such result should grow out of subsection (6), it would have been easy to state that Section 9 (b) would only apply to corpora-

tions none of the stockholders of which were citizens of enemy countries.

The construction claimed by appellees would be not only a radical change from prior legislation on the subject, but had the meaning claimed by appellee been the purpose of the legislation, it would have been radically different from the request for legislation made by the Secretary of State.

The Attorney General, in submitting the bill to the Committee of the House and to the Senate would have called attention to this radical change in the bill from the character of the bill requested by the Secretary of State. The fact that the Attorney General did not do so, but on the contrary stated that he had drawn the bill in compliance with the request of the Secretary of State, advised the Congress that subsection (6) did not do what appellees seek to construe it as doing.

There were eight subsections of Section 9 (b). These subsections were each separated by the word "or," so each independent of the others gives the right of return. Subsection (1) covered citizens, including corporations of all countries not enemy countries. Subsection (6) extended return of property to corporations of enemy countries if entirely owned in countries other than enemy countries.

THIS REMEDIAL STATUTE SHOULD BE LIBERALLY CONSTRUED AND ITS PURPOSE, TO RETURN PROPERTY, GIVEN FULL EFFECT.

Section 9 (b) was a remedial statute, intended to return to owners property held by the Alien Property Custodian; not to prevent its return.

The fact that no reference to (6) was made by the Attorney General or in the report of the Committee or on the floor of the House or Senate shows that it was not intended to cause a radical change of policy, or interfere with the general purpose to return property provided by Section 9 (b). If the radical meaning contended for by appellees had been suspected, it would certainly have attracted attention and brought forth discussion in both Houses of Congress.

The report of the House Committee, coupled with the letters of the Attorney General and the Secretary of State, advised Congress that subdivision (b), of Section 9, which was the principal amendment to Section 9, would return to all citizens and subjects of neutral countries their property held by the Alien Property Custodian, and this construction of the act was accepted by Congress, and the clear purpose of Congress in passing the act, excluded from (6) the meaning sought to be given to it by appellees.

If it is suggested that the holding of stock in the appellant company should control the return of the property, it is undoubtedly true that much of the stock of appellant was held by Swiss citizens, and citizens of neutral countries, and as the property of citizens of all neutral countries was to be returned, it must have been that the bill meant to deal with corporations and include them in the words "citizens of neutral countries." For this reason the construction of (6) sought to be placed upon it by appellees cannot have been the purpose of Congress.

There is not a line in subsection (6) which suggests that *no corporation* except one entirely owned by citi-

zens other than Germans, etc., shall have its property returned.

The general signification of the word "citizen" in subsection 1 can only be modified by express terms, or by language so clearly intended to modify it that the implication of modification is necessary and irresistible.

In undertaking to show that subsection (6) limits and restricts the meaning of subsection (1), counsel for the appellees in the Court of Appeals contended that subsection (1) provides that all citizens of certain countries may recover property seized by the Alien Property Custodian, whereas subsection (6) of Section 9 (b) specifies certain organizations of the *same* countries which may recover property seized by the Alien Property Custodian, only under certain conditions.

ERROR OF POSITION TAKEN BY APPELLEES

Counsel for the appellees fell into error when he claimed that subsection (6) applies to the *same* countries to which subsection (1) applies. Subsection (1) applies to citizens and subjects of any nation other than Germany, Austria, Hungary or Austria-Hungary, while subsection (6) applies to partnerships, associations or bodies of individuals *outside of the United States,* or a corporation incorporated *within any country other than the United States.* Subsection (1), therefore, *excludes* citizens and subjects of Germany, Austria, Hungary or Austria-Hungary, while subsection (6) *includes* individuals located, or corporations

incorporated within Germany, Austria, Hungary or Austria-Hungary.

Counsel for the appellees undertook in the lower court to sustain the doctrine that subsection (6), by specifically naming corporations, excludes corporations from subsection (1). Any such view of the doctrine applicable to general and specific provisions of a statute is entirely inaccurate, and goes far beyond the sound doctrines of statutory construction.

Upon this subject, Chief Justice Marshall, in *Faw v. Marsteller,* 2 Cranch, 10 (2 Law Ed., 191), said:

> "It will not be denied that there is much weight in this argumnt" (that specific words are controlling as against general expressions) "but it does not appear to the court to be strictly correct. In searching for the literal construction of an act, it would seem to be generally true that positive and explicit provisions, comprehending in terms a whole class of cases, are not to be restrained by applying to these cases an implication drawn from subsequent words, unless that implication be very clear, necessary and irresistible." See also *Adams v. Woods,* 2 Cranch, 336 (2 Law Ed., 297).

The word "citizen" in subsection (1) comprehends a whole class including corporations. Subsection (6) does not limit corporations whose property is to be returned to those "entirely owned" by citizens of nations other than Germany, Austria, Hungary or Austria-Hungary, and it certainly does not carry an implication of the limitation of the meaning of the word "citizen" which is "clear, necessary and irresistible."

In Pennsylvania, *Erie v. Boots,* 72 Pa. St., 196, an act passed in 1861, authorizing the city councils to

improve streets and levy the cost thereof on property owners, provided that such improvements should not be ordained except on petition of the majority of the property owners on the street to be improved. In 1864 the Legislature gave councils power to ordain improvements by a two-thirds vote, without such petition. In construing these two acts, the Court held that the latter act did not repeal the former, but that the two statutes standing together had the effect of giving two modes by which streets could be improved.

If we apply this rule, we must read the whole of Section 9 (b) so that a corporation could secure the property by a showing of its neutral citizenship under subsection (1), or by showing under subsection (6) that it is a corporation without the United States, entirely owned by citizens of nations other than Germany, Austria, Hungary, or Austria-Hungary. In other words, a corporation could either proceed, for the return of its property, by showing *its citizenship*, or by showing *the citizenship of its owners.*

When two acts are not totally inconsistent, there can be no repeal by implication.

In another Pennsylvania case, *Osborne v. Everitt*, 103 Pa. St., 421, we find an expression of the doctrine as to the construction of statutes, which clearly covers the case at bar. Under an act of March 20, 1810, *all* plaintiffs were given the right to bring a suit before a Justice of the Peace, through the use of a "long" summons, without first giving security for costs. This statute did not differentiate between resident and non-resident plaintiffs. In 1842, a statute was passed providing that a *non-resident plaintiff "may,* upon giving

security for costs, begin such suit upon a short summons." In the case last cited, the Court held that the latter statute did not repeal the former, as to *non-resident plaintiffs*, but stated "here are two distinct modes of procedure, either of which apparently may be adopted at the pleasure of the plaintiff. We cannot think that the conferring of one right takes away the other by implication. There are no words of repeal; the two rights are not in hostility with each other; both acts may coexist without any conflict." In this case there was the specific reference to non-resident plaintiffs, but the Court held this did not prevent suit by non-residents under the general provision.

In *Mitchell v. Duncan*, 7 Fla., 13, it was held that a subsequent statute which adds accumulative penalties and institutes new methods of proceeding, does not repeal a former, without negative words; nor does a latter act repeal a prior one unless there be a contrariety or repugnance, or at least some notice taken of the former so as to indicate an intention to repeal. This decision was based on the construction of an act which provided a judgment creditor with a remedy against negligence of the sheriff, and the latter statute, which provided a different remedy without words of repeal as to the former statute. Both statutes were held to remain in force.

Counsel for appellee cited in the lower court the case of *Townsend v. Little et al.*, 109 U. S., 504, to sustain the proposition that, where there is a general provision in a statute, and a specific provision apparently in conflict, the specific provision always controls. We deny

that there is any conflict between subsection (6) and subsection (1). We have pointed out that subsection (6) adds an additional class, who, by showing ownership by other than German, Austrian, Hungarian, or Austro-Hungarian citizens, are to have their property returned.

It was perfectly clear in the case of *Townsend v. Little* that the act of the Utah Legislature, following the act of Congress, gave authority to the Mayor of Salt Lake City to execute a deed without witnesses. This provision in no sense repealed the general law of Utah applicable to the witnessing of deeds, and the Court did not hold that a deed executed by the Mayor of Salt Lake City with witnesses was not a valid deed. Deeds executed under the general statute were valid. Deeds executed by the City of Salt Lake under the special statute were valid. Applying the principle to the present case, under subsection (1) a citizen of any nation other than Germany, Austria, Hungary, or Austria-Hungary, becomes entitled to the return of his property. Under subsection (6), a corporation incorporated in Germany, Austria, Hungary, or Austria-Hungary, by showing it "was entirely owned by citizens of nations other than Germany, Austria, Hungary, or Austria-Hungary" is entitled to the return of its property.

THIS IS REMEDIAL LEGISLATION AND SHOULD BE SO INTERPRETED AS TO "REPRESS THE MISCHIEF AND ADVANCE THE REMEDY."

There are other principles of statutory construction which bear directly on the interpretation of Section 9 (b). Chancellor Kent, in his usual clear and con-

vincing manner, stated these principles, on pages 462-464, volume 1, of his Commentaries, in the following words:

> "For the sure and true interpretation of all statutes, whether penal or beneficial, four things are to be considered: What was the common law before the act; what was the mischief against which the common law did not provide; what remedy the parliament had provided to cure the defect; and the true reason of the remedy. It was the duty of the judges to make such construction as should repress the mischief and advance the remedy. * * * Statutes that are remedial and not penal are to receive an equitable interpretation by which the letter of the act is sometimes restrained and sometimes enlarged, so as more effectually to meet the beneficial end in view, and prevent a failure of the remedy. * * * When the words are not explicit, the intention is to be taken or presumed according to what is consonant to reason and good discretion. Those rules by which the sages of the law, according to Plowden, have ever been guided, in seeking for the intention of the Legislature by the maxims of sound interpretation which have been accumulated by the experience, and reviewed by the approbation of the ages."

It is clearly shown in the Committee reports that that part of Section 9 (b) which provided for the return of property to neutral citizens came as a result of activity by our State Department to relieve a situation created by a protest of neutral nations against the seizure and retention of the property of their nationals. Section 9 (b) of the amendment is clearly a remedial statute; the "mischief" which the statute in-

tended to cure, and the "necessity for the law" arose out of the conditions which resulted from the seizure by our Government of neutral citizens' property, and the record admits of no doubt that "the remedy in view" was the correction of this condition, which was embarrassing our Government. Nowhere in the record connected with the enactment of this amendment, is there the slightest suggestion that either the committees, in reporting the measure to Congress, or any single member of either branch of Congress, intended to relieve the situation as to *natural* neutral citizens, and not to relieve the situation as to *artificial* neutral citizens.

Clearly subsection (1) standing alone, would provide for the return of property to a neutral corporation. We may, therefore consider, this being the first subsection, that up to this point certainly Congress intended to return property to neutral corporations without regard to their stockholders. If there is to be any limitation on this return by reason of the citizenship of the stockholders, subsection (6) must be construed as repealing subsection (1) insofar as it would permit the return of neutral corporate property.

There are no express words of repeal used in subsection (6) and the only repeal of subsection (1) which subsection (6) could contain must arise by implication.

If any possible doubt exists as to the soundness of the construction of the Act of June 5, 1920, and of the fact that subsection (1) includes corporations, we may turn to the report of the Committee on Interstate and Foreign Commerce upon this bill, made to the House of Representatives. This report, and its construction of the bill, carried it through both Houses of Congress,

and was accepted by both Houses as the correct presentation of the meaning of the bill.

The legislation was passed because the Secretary of State asked for it, and on account of the interpretation of the meaning of the bill given by the Secretary of State and the Attorney General. The Secretary of State said that it was to return to all neutral nationals their property. He evidently believed that the war being, from a practical point of view, over, the original Trading with the Enemy Act authorized the return of this property, but as the Attorney General had taken a different view of the matter, he asked for legislation returning the property to neutral nationals. The Attorney General, in his letter, expressly declared that this legislation would return the property of neutrals whose property had been sequestered upon the ground that they did business in enemy countries.

The property of the Swiss National Insurance Company was sequestered because it did business in Germany. It was sequestered for no other reason, and the report of the Committee advised Congress that the act, as drawn, meant the property of appellant was to be returned and therefore (6) was not intended by Congress to take from (1) the ordinary and usual meaning of "citizens" which included corporations.

THE INTENT OF CONGRESS, WHICH SHOULD BE GIVEN EFFECT

It cannot be doubted that Congress intended the word "citizen" in subsection (1) to include corporations. Six of the additional subsections undoubtedly gave relief to additional parties. Congress looked to subsection (6) to do the same thing. It added *partner-*

ships and corporations of enemy countries, and thus it was in line with the other six subsections.

Subsections (1) and (6) are thus harmonized.

In *Peck, et al., v. Jenness, et al.,* 48 U. S. (7 How.), 612, Mr. Justice Grier, delivering the opinion of the court, said::

> One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. * * * It is among the elementary principles with regard to the construction of statutes, that every section, provision and clause of a statute shall be expounded by reference to every other; and if possible every clause and provision shall avail and have the effect contemplated by the legislature.

The court will give these two paragraphs the meaning, if possible, which will permit them to have the effect contemplated by Congress.

Accepting the view that Congress intended, by subsection (1) to include corporations not of enemy countries, and that subsection (6) adds corporations of enemy countries, any difference is reconciled, the purpose of Congress is carried out, both clauses avail, and have the effect contemplated by the Congress.

SECTION 9 (a) TRADING-WITH-THE-ENEMY ACT GIVES RIGHT OF ACTION

The bill of complaint shows that the Swiss National Insurance Company was incorporated under the laws of Switzerland, a neutral country, and was a citizen of Switzerland, so recognized by the Swiss Government; that the securities in controversy were being used in the United States for the legalized conduct of its busi-

ness here; and that the property was taken over by the Alien Property Custodian after the armistice upon the ground that it was conducting a reinsurance business in Germany, a country technically at war with the United States.

The plaintiff, being a corporation incorporated by a neutral country, the only provision under which it could have been classed as an enemy was Section 2-a of the Trading-with-the-Enemy Act, which provided that the term "enemy" in the act should extend to a corporation "incorporated within any country other than the United States" and doing business within territory of a "nation with which the United States *is at war.*"

The United States was at the time of this seizure technically at war with Germany, although the armistice had ended fighting, and the Trading-with-the-Enemy Act classified the plaintiff as an enemy *while the United States was at war with Germany.*

This classification, in the present tense, only extends the quality of enemy to the plaintiff while the United States "*is*" at war with Germany. The doing of business in a country with which the United States is at war makes the classification of the plaintiff an enemy, and the classification *only applied during the period of the war,* or *during the period that it continued to do business in a country with which the United States is at war.*

Section 9 of the original Trading-with-the-Enemy Act provides:

> *Any person not an enemy or ally of enemy, claiming any interest, right or title* in any money, or other property which may have been conveyed,

> transferred, assigned, delivered or paid to the Alien Property Custodian herein, and held by him or by the Treasurer of the United States * * * may file with the said Custodian a notice of his claim under oath. * * *

The act provides for application to the President for the return of the property and then proceeds "if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may at any time before the *expiration of six months after the end of the war,* institute a suit in equity in the District Court of the United States * * * to establish the interest, right, title or debt so claimed."

These provisions of Section 9 are carried without change in Section 9 (a) of the amendment of June 5, 1920. They allow *any person not an enemy* or ally of enemy, claiming an interest, to bring suit and if the court finds such person *not to be an enemy,* then the property of such person is to be awarded it by the court.

The act does not limit the right of recovery to a person not an enemy *at the time of the seizure of the property.* It provides that any person *not an enemy* can recover. The present tense is again used, and the meaning clearly intended was that a person seeking return of German property shall recover if not then an enemy. If it had been the intention of Congress to limit the right of recovery to those who were at no time enemies, the act would have so provided. On the contrary, it gives the right of recovery to *any person not an enemy,* and in no way limits the time when such person was not an enemy except to the time when the suit is brought by such person.

The act authorizes suit for six months after the end of the war. This was a further recognition of the fact that the end of the war ended enemy character and gave the right to sue.

Section 2, which defines an enemy as one doing business in a country with which the United States is at war, and Section 9, which requires the return of the property to those who may show they are not enemies, are in perfect accord, the meaning of the language being that a corporation of a neutral country is to be only treated as an enemy when doing business in a country with which the United States is at war, and it may recover its property at any time when it can show it is not doing business in a country with which the United States is at war.

THE ACT TERMINATING THE WAR CONFIRMS OUR CONSTRUCTION OF SECTION NINE

The war with Germany and Austria-Hungary was terminated by the Act of Congress approved July 2d, 1921. (See Federal Statutes Annotated, p. 68.) Section 5 of this act is as follows:—

> Sec. 5. (Seized property—disposition.) *All property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession* or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7,

1917, in or has since that date come into possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatsoever, *shall be retained by the United States of America* and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided, by law until *such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government*, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial

> and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America.

The Treaty of Peace with Germany embodied the foregoing section. It was ratified November 8, 1921, and the President fixed July 2, 1921, as the date of the termination of the war.

Section 5 of the act terminating the war, expressly provided for the *retention of property of the German and Austro-Hungarian Governments* and of *their nationals* until their Governments might adjust their liabilities to the United States and to nationals of the United States.

It made no provision for the retention of the property of neutral nationals, and the very fact that it was deemed necessary with the close of the war, to direct the retention of that property which Congress wished to retain, *emphasizes the correctness of the construction of Section 9 which requires the return of neutral property temporarily sequestered because the neutral was doing business during the war in an enemy country.*

We do not urge that the provision in the Act of July 2, 1921, which names the property to be retained as that of the Imperial German Government and of all German nationals, repeals any provision passed prior to that date for the retention of the property of citizens of neutral countries, but we do insist that there is more reason to justify such a contention than that made by appellees, who insist that subsection (6), by naming corporations, excludes corporations from Subsection (1) of the Act of June 5, 1920.

In *Kann v. Garvan,* 263 Fed. R. 916, Judge Learned Hand said:

> But the Trading with the Enemy Act provides an adequate remedy in Section 9 to those who can maintain that they are not enemies, and who can therefore have any right to object to the capture; under the Civil War Confiscation Act, its equivalent was included in the claimant's right to appear and contest condemnation. It is indeed, a question whether, after peace is declared, a former enemy, then an alien friend, might not bring a suit under Section 9, at least as amended on July 11, 1919; * * *.

The changes in the Act of July 11th, 1919, which were probably in the mind of Judge Hand were the jurisdiction given to the Supreme Court of the District of Columbia to hear any case of claimants, not limiting the jurisdiction to the District Court of the District in which the claimant resided, together with the added provision as follows:—

> Provided further, however, That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

The provisions are found in all amendments to the act adopted since July 21, 1919.

It is evident that the suggestion of Judge Hand that "after peace is declared, a former enemy, then an alien friend, might bring suit under Section 9" was the view and purpose of Congress, and for this reason it *was expressly provided* that the property of German

and Austro-Hungarian Governments, and their nationals should be retained.

CONSTITUTIONAL RIGHT TO RETURN, THERE BEING NO ENEMY STATUS, AND ITS RECOGNITION BY CONGRESS.

The Constitution gives Congress the power to "declare war, grant letters of marque and reprisal and make rules concerning captures on land and water." This provision of the Constitution is exercised by Congress in connection with that provision of the Constitution which directs that no person shall "be deprived of life, liberty or property without due process of law."

The provision that no person shall be "deprived of life, liberty or property without due process of law" applies to aliens as well as citizens of our own country. (*Wong Wing v. U. S.*, 163 U. S. 228, *Lem Moon Sing v. U. S.*, 158 U. S. 538.)

The constitutionality of the Trading-with-the-Enemy Act and the seizure of property under it by the Custodian have been sustained by the Supreme Court of the United States because Section 9 of the Trading-with-the-Enemy Act gives a claimant the right to go into the courts and test the question of enemy character. (*Metropolitan Trust Co. v. Garvan*, 254 U. S. 554—65th L. Ed. 403.)

The subject was further discussed in the case of *Stoehr v. Wallace*, 255 U. S. 239 (65 L. Ed. 604). In the fourth headnote of this case it is stated:

> Shares of stock standing in the name of one who is neither an enemy nor an ally of an enemy could, consistently with due process of law, be

> seized and required to be transferred to the Alien Property Custodian * * * since such act distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy, a right to assert and establish his claim by a suit in equity, unembarrassed by the precedent executive determination, * * *.

In *Garvan v. $20,000 of Bonds*, 265 Fed. R. 479, Judge Ward of the Circuit Court of Appeals of the Second Circuit, delivering the opinion of the Court said with reference to the Trading-with-the-Enemy Act:—

> If persons not alien enemies, or allies of alien enemies, were given no means to protect their interests in such property the seizure would be unconstitutional as without due process of law; * * *.

Our Constitution guards the rights of property. No person can be "deprived" of his property without a legal justification. *To hold property, keeping it from the possession of the owner*, is to "deprive" him of it. There must be a legal basis for holding to support even an act of Congress authorizing the holding.

The conclusion of the war ended the justification for sequestering the property of plaintiff. The war being over, the fact that plaintiff was doing business in Germany did not concern us. The right of sequestration by Congress ceased, and a specific provision in the act for a future retention of this property would have been unconstitutional. It would have "deprived" the owner of property without legal cause and without "due process."

The difference between the status of property owned

by the Governments of countries with which we were actually at war and their nationals, and the nationals of neutral countries, is apparent. The retention of the property of the former was based upon the necessity for treaty adjustments between the nations at war.

The plaintiff being a national of a friendly neutral, there was really rather a stretch of international law to extend to it the classification of enemy at all. The only excuse was that it did business in an enemy country.

A neutral has the right to do business in enemy countries. Germany could have no complaint because plaintiff did business here; we could have none because plaintiff did business there.

Every proper recognition of our relationship to a friendly neutral required that the property should only be retained by the Custodian while the trading in an enemy country continued, and the original Act and all subsequent legislation clearly recognized this duty and obligation of our country towards nationals of friendly neutrals.

The provisions of the Trading-with-the-Enemy Act which require the return of property held by the Custodian, whenever the owner is not an enemy, are in harmony with recognized rules of international law, and the "due process" provision of the Constitution. The temporary sequestration of the property of neutrals is alone to prevent its acquirement in any way by an enemy country, and to prevent its use as an instrument of war against our people. When the war ceases, such use is impossible, and the right of sequestration no longer exists.

The status of a friendly neutral does not differ from that of a citizen of the United States, temporarily in

Germany during the war; though detained against his will, he was classed as an enemy. On his return to the United States, he was in position to show that his enemy status has ceased and he was entitled to the return of his property sequestered during his sojourn in Germany.

Without waiting for further legislation directing the return of such property, on the arrival of a citizen of the United States in this country, he could have recovered his property in this court, because he could have shown that he did not occupy any longer, the status of an enemy.

Indeed, we understand the Department of Justice, representing the President, returned property to citizens of the United States on their arrival in the United States, without legislation authorizing its return other than that upon which we rely. On their return they were in position to have shown, as a matter of fact, that they occupied no enemy relation, and the courts, in a suit against the Alien Property Custodian, would have ordered it returned. The Department of Justice returned it in recognition of this right. The same principle is equally applicable to the plaintiff in the present case.

The claim of plaintiff has not been submitted to the Department of Justice. It was not submitted to the President, because, if so submitted, suit could not be brought for six months. The Act of Congress only authorized suit in the Supreme Court of the District if brought within six months after the war ended. The consideration of the rights of plaintiff were submitted to counsel at a time when submission of the right of plaintiff to the President might have prevented their submission to the courts.

In *Miller v. The United States,* 11 Wallace, 315; 20th Law Ed., 148, Mr. Justice Field expressed the opinion that the war powers of Congress were limited by the law of nations, and said:

> The war powers of the Government have no express limitation in the Constitution and the only limitation to which their exercise is subject *is the law of nations.* That limitation necessarily exists. When the United States became an independent nation they became, to use the language of Chancellor Kent, "*subject to that system of rules which reason, morality and custom had established among the civilized nations of Europe as their public law*" (1 Kent Com. 1). And it is in the light of that law that the war powers of the Government must be considered. The power to prosecute war granted by the Constitution, as is well said by counsel, is a power to prosecute war according to the law of nations and *not in violation of that law.* The power to make rules concerning captures on land and water is a power to make such rules as Congress may prescribe subject to the condition that they are within the law of nations. There is a limit to the means of destruction which the Government in the prosecution of war may use, and there is a limit to the subjects of capture and confiscation which Government may authorize, imposed by the law of nations, and is no less binding upon Congress than if the limitations were written in the Constitution. The plain reason of this is that the rules and limitations prescribed by that law were in the contemplation of the parties who framed and the people who adopted the Constitution.
>
> Whatever an independent civilized nation may do in the prosecution of war according to the law of nations, Congress under the Constitution may authorize to be done and nothing more.

While this excerpt is taken from a dissenting opinion of Mr. Justice Field, it is not in conflict with the decision of the court. Mr. Justice Clifford concurred in the opinion.

Under our Constitution the *retention* of the property of an American citizen or of a friendly neutral who had ceased to be an enemy under legislation giving no opportunity to test the legality of the retention, would be unconstitutional.

When there is doubt as to the meaning of an act, that construction will be adopted which saves the act from constitutional criticism.

But the broad provisions of the Trading-with-the Enemy Act were intended by Congress to authorize this claimant to show to the court at any time within six months from the termination of the war, that it does not occupy the enemy relation described in the act, and therefore has the right to the return of its property. The Act is constitutional because the construction we place upon it is the one Congress intended.

The Department of Justice could authorize the return: the courts should require the return.

THE ACT APPROVED MARCH 4, 1923

This last amendment to the Trading-with-the-Enemy Act retained the eight provisions of Section 9 (b) which were found in the Act of June 5, 1920, and added three additional provisions. Each of the eleven provisions authorized the return of property, and the entire eleven were separated by the word "or" making each of the eleven still stand independent of the others.

Subsections (9) and (10) provided for the return of $10,000, to every claimant whose claim did not exceed $10,000, and if exceeding it, the sum of $10,000 was to be paid if the claim was susceptible of division.

Subsection (11) is as follows:

> "A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of or more than 50 per centum of the interests or voting power in any such partnership, association, other unincorporated body of individuals or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States or free cities other than Germany, Austria, Hungary, or Austria-Hungary: Provided, however, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection."

Subsection (11) was passed in view of the fact that the Department of Justice had not recognized the right of corporations of neutral countries to the return of their property, and subsection (11) required the return if the control or more than fifty per cent of the voting power in such partnerships, associations or other unincorporated bodies of individuals, or corporations, was at the time vested in citizens or subjects of nations other than Germany, Austria, Hungary or Austria-Hungary.

The fact that (6) was not repealed shows that Congress recognized it as being applicable only to partnerships, associations or other unincorporated bodies of individuals, or corporations incorporated within Germany, Austria, Hungary or Austria-Hungary, for if (6) had prevented the return to any corporation of a neutral country, with one stockholder a citizen of a former enemy, then (11) would have been in direct conflict with (6). Subsection (11) was passed only with the proviso "*that this section shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection.*" Although Congress specifically directed the return of property to corporations of neutral or friendly countries under the condition named in (11), this specific action by Congress was not to affect the rights of any citizen or subject under (1). If paragraph (1) gave to corporations *of neutral countries* the right of return, without regard to the citizenship of the stockholders, then the fact that (11) required the return if 50 per cent or more of the voting power of any such corporation was vested in citizens or subjects of states other than Germany, Austria, Hungary or Austria-Hungary, was not to prevent the operation of the broader rule which returned to citizens of neutral countries without regard to the stockholders the property held by the Alien Property Custodian.

There were members of the House of Representatives and of the Senate who undoubtedly were convinced that (1) should receive the construction for which we contend, and some may have been familiar with the action of the Court of Appeals in the pending litigation, and with the fact that this decision was rendered by a divided court.

Subsection (11) was allowed to pass only with the proviso reserving all the rights which any citizen or subject had under subsection (1), because as so passed it could do no harm and might immediately relieve some pressing cases.

In *Chew Heong v. U. S.*, 112 U. S. 536, 28 L. E. 770, this court, speaking through Mr. Justice Harlan, held:

> "Courts uniformly refuse to give to statutes a retrospective operation, whereby rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the legislature."

In Volume (5), page 5412, Digest, U. S. Supreme Court Reports, many decisions to the same effect are cited.

Not only was there nothing in (11) to indicate that this provision was to restrict rights vested in appellant by the act of June 5, 1920, but as a matter of precaution, Congress expressly declared, in connection with this subsection, that it should not affect any rights that any citizen or subject might have under subsection (1).

It is respectfully submitted that the appellants are entitled in equity and in law to have their property returned, and that the motion to dismiss their petition should not have been sustained.

HOKE SMITH,
Attorney for Appellant,
906 Southern Bldg.,
Washington, D. C.

October 9, 1924.

EXHIBIT A

ACTS OF CONGRESS BEARING ON CASE

AN ACT to define, regulate, and punish trading with the enemy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."

* * * * * * * * *

Sec. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and *any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.*

* * * * * * * * *

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or *corporation* or body politic. (Approved October 6, 1917.)

The following is the Amendment of June 5, 1920. Section 9-a is substantially the same as Section 9 in the original bill.

The important amendment of Section 9-a applicable to this case, is the right given claimant to sue in the Supreme Court of the District of Columbia.

An Act to amend Section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, be, and hereby is, amended so as to read as follows:

"Sec. 9. (a) That *any person not an enemy* or *ally of enemy claiming any interest, right,* or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or *seized by him hereunder and held by him or by the Treasurer of the United States,* or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States *may file with the said custodian a notice* of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: Provided, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days

after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, *said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia* or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), *to establish the interest, right, title,* or debt so claimed, and if *so established the court shall* order the payment, conveyance, transfer, assignment, or *delivery to said claimant* of *the money or other property so held by the Alien Property Custodian* or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid

to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"(1) A *citizen or subject* of any nation or State or free city *other than Germany or Austria,* or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary, and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of Sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals *outside the United States,* or a corporation incorporated within any country *other than the United States, and was entirely owned* at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government —then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: * * * Provided further, however, That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish

any right, title, or interest which he may have therein.

"(c) Any person whose property the President is authorized to return under the provisions of *subsection (b) hereof,* may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof."

* * * * * * * * *

INDEX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

SWISS NATIONAL INSURANCE COMPANY, A CORPORATION,
Appellant,

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, and FRANK WHITE, AS TREASURER OF THE UNITED STATES,
Appellees.

SUPPLEMENTAL BRIEF FOR APPELLANT.

In the brief of appellee it is insisted that the word "citizen" does not always include corporations. In support of this proposition, the only cases cited are those discussed on pages 9 and 10 of appellant's brief. As there shown, it was the question of "privileges and immunities," not the meaning of the word "citizen" upon which the Court passed. We still insist that the decisions of this Court, and the decisions of all the state courts have recognized the word "citizen" as including "corporations."

Replying to the suggestion that clause (1) refers to citizenship "at the time of the return of the property"

we need only say that (1) applies to natural and artificial persons, and requires the natural person, at the time of the return to be a citizen of a country with which we had not been at war.

We call attention, in this connection, to the proviso to Subsection (8). It reads as follows:

> "No *person* shall be deemed or held to be a citizen or subject of Germany, Austria, Hungary or Austria-Hungary for the purposes of this section even though he was such citizen or subject at the time first specified in this subsection, if he has become or *ipso facto* shall become, or through exercise of option shall become a citizen or subject of any nation or state or free city other than Germany, Austria, Hungary or Austria-Hungary, first, under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany, Austria, Hungary, or Austria-Hungary and the United States or three or more of the following named powers, viz: The British Empire, France, Italy and Japan, under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid, between any nation, state or free city of the one part whose territory in whole or in part on August 4, 1914, formed a portion ofthe territory of Germany, Austria, Hungary or Austria-Hungary and the United States or three or more of the following named powers, viz: The British Empire, France, Italy and Japan, on the other part."

The original Trading with the Enemy Act provides that "The word 'person' as used herein shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic."

The proviso of Section 9(b), Subsection (8) in effect says: "No individual, partnership, association, company or other unincorporated body of individuals or corporation or body politic, shall be deemed or held to be a citizen or subject of Germany, Austria, Hungary or Austria-Hungary, for the purposes of this section, etc."

It is under Subsection (1) that the citizens and subjects of the territory cut off from Germany, Austria, Hungary and Austria-Hungary are given the right of the return of their property held by the Alien Property Custodian.

This proviso, therefore, expressly includes corporations among the "citizens and subjects" to whom property is to be returned under Subsection (1). It uses the term "person" as equivalent to "citizens and subjects," and declares that corporations of Czscho-Slovakia, Jugoslavia, and all of the provinces cut off from Germany and Austria, by the Treaties of Peace, shall have their property returned.

They get back their property through Subsection (1), and this proviso construes "citizens and subjects" in (1) as including corporations.

Replying to the suggestion of counsel for the appellee that Subsection (6), if construed to refer to corporations of Germany, Austria, Hungary, or Austria-Hungary, applies to only a "theoretical residuum," we cite the following corporations of Germany, all the stock of which is owned entirely outside of Germany, Austria, Hungary and Austria-Hungary, and as to most of them, owned entirely by corporations in the United States.

The report of the German Alien Property Custodian lists the following German companies as entirely owned by American citizens:

The American Shoe Stores Company.	The first-named company is owned by two Americans, and the second is owned by the first company.
The Vera American Shoe, Ltd.	
Blitz-Apparate-Febrik, Ltd.	Sole owner an American.
German International Harvester Co.	Owned by the American company.
German Multigraph Co., Ltd.	All shares in ownership of American parent company.
Deutsche Vereinigte Shoe Machinery Co., Ltd.	Stock exclusively in American hands.
Dungan, Hood & Co., Leather Company, Ltd.	Sole owner an American.
Stephen H. McFadden, Ltd.	Owned by two Americans.
Steel Wares Factory "Griffon," Ltd.	Owned by an American in New York.
International Harvester Co., Ltd.	Stock solely in American possession.
Johnston Harvester Machine Co.	Stock all in the hands of the parent company in New York.
Otis Elevator Works, Ltd.	Owned by American parent company.
Remington Typewriter Co., Ltd.	Entirely owned by American company.
Singer Sewing Machine Co.	Owned by American Company.
Smith Premier Typewriter Factory, Ltd.	Owned by American Company.
Weston Instrument Co.	Entirely owned by three Americans.
Walter A. Wood Co.	Owned by eight Americans.
Miehle Druckpressen Co., Ltd..	Of a capital of 900,000 marks, all is owned by Americans except 34,000 owned by an Englishman.

In reply to the suggestion of counsel for the appellee that it would have been easy to have stated, in (6) that the corporations therein referred to were those only of countries with which we had been at war, it can also be pointed out that, if (6) had been intended to prohibit the return to a corporation organized in a neutral country where only one stockholder was a citizen of a country with which we had been at war, it would have been easy to say that no corporation outside of

the United States should have its property returned unless it was entirely owned, etc. As this language was not used, it cannot be attributed to (6) by implication. It would have been easy to use it; the failure to use it sustains our construction.

Subsection (1) authorized the return of property of citizens and subjects of all nations other than Germany or Austria or Hungary or Austria-Hungary. (2) authorized the return to a woman who had been a citizen of a neutral or allied nation and had married a German, Austrian or Hungarian. (3) authorized the return to an American woman who had married a German, Austrian or Hungarian. (4) authorized the return of the property of diplomatic or consular officers of Germany, Austria or Hungary. (5) authorized the return to a citizen of Germany, Austria, or Hungary, who was interned in the United States. (7) authorized the return of property to the Governments of Bulgaria and Turkey. (8) authorized the return to the Governments of Germany, Austria and Hungary.

The only reasonable construction of (6), placed in this class, was that it meant to return the property of corporations of Germany or Austria or Hungary, provided these corporations were owned by citizens of states other than Germany, Austria or Hungary, and that it added, thereby, an additional class to be relieved under Section 9(b).

If the mere mentioning of corporations in (6) excluded from "citizens and subjects" in (1) corporations of neutral countries, then the mention of women in (2) and (3) excluded all other women from having their property returned. Of course Congress had no such purpose.

The additional seven sections after (1) were all intended to extend the right of return. That this was fully understood by the Committee on Interstate and Foreign Commerce is shown by the following extracts from the Committee hearings.

STATEMENT OF MR. LUCIEN H. BOGGS, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL.

"Mr. Boggs. Subdivision No. 5 was suggested by the Attorney General's office of its own motion, and the Department of State has no responsibility with reference to that portion. With reference to Subdivision No. 5, it is designed to procure the return of the property of those internees who are now living in this country. (Page 5 of the Report.)

* * * * * * *

"Mr. Dewalt. Does the proposed act have in contemplation the cases of residence of Alsace-Lorraine, occupied territory?

"Mr. Boggs. Yes, sir.

"Mr. Dewalt. How do you protect them and what rights do they receive under this act?

"Mr. Boggs. That refers to Subdivision No. 1 of subsection (b), contained on page 4 of the present draft:

'A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary——' as it now reads:

'(including any State or free city in the four nations last named), and is at the time of the return or his money or other property hereunder a citizen or subject of any such nation or State or free city.'

"Now, that would permit the return to a *person** who was not a citizen at the time the property was taken and is not now a citizen of one of the enemy countries. (See Note 1.) In order to clarify the situation with regard to Alsace-Lorraine and other countries that have been transferred from enemy to nonenemy or friendly status, by virtue of the war, there has been inserted the proviso which is contained at the bottom of page 6 and following on page 7, the present draft of which reads:

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1. It will be observed that Mr. Boggs, representing the Department of Justice, cited Subdivision (1) of Subsection (b), namely, "A citizen or subject of any nation or state or free city other than Germany, etc.," as providing for the return to citizens and subjects of Alsace-Lorraine. He stated that it would permit the return to a *person* who is not now a citizen of one of the enemy countries. He used the word "person" as applicable to (1) and person is defined in the Act to include corporations.

He also called attention to the proviso of Subsection (8) heretofore referred to, which used the word "person," thereby including corporations, as returning the property of the citizens and subjects of these countries, cut off from Germany and Austria by the Peace Treaties.

Mr. Boggs thereby definitely advised the Committee that Subsection (1) was intended to include corporations. A little further on, as will be observed, he again stated that the "class of property that we are proposing to return is essentially the property of *persons* who have been and will hereafter be recognized by practically all the civilized world as citizens of those countries." In this he referred to the property of "*persons*" included in the territory cut off from Germany and Austria and Hungary by the Peace Treaties.

* Italics ours throughout except as otherwise indicated.

• • • "Provided, That no person shall be deemed or held to be a citizen or subject of Germany, or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto, or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria or Hungary (including any state or free city in the three nations last named), (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy and Japan (of the other part).'

"That is one class of treaties which may accomplish it. The second class is:

'Under terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy and Japan of the other part.'

"In other words, if the status of a given piece of former enemy territory has been definitely changed to neutral or friendly territory by virtue either of one of the principal treaties of peace or by virtue of a subsidiary treaty which has been made pursuant to such treaty of peace, and if

either of these treaties of peace has been duly recognized by either the United States or by three or more of those powers named there, Great Britain, France, Italy, and Japan, then, in that event only do we recognize the change of status as having been properly accomplished; but it will be seen, I think, that these limitations will not at all prevent the *return of Czechoslovakian property*, the status of which Mr. Hill will be able to advise you more upon than I can, because it is a matter that pertains more to his department. As I understand, the status of Alsace-Lorraine has been absolutely fixed by the signature of the principal powers to the treaty with Germany, and the status of Czechoslovakian property; how is that, Mr. Hill?

"Mr. Hill. It extends to all boundaries. (Pages 12 and 13 of the Hearings.)

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"Mr. Boggs. But I think you will find there is nothing in the text of it that would necessarily make it objectionable to Congress, for the reason that the class of property that we are here proposing to return is essentially the property of *persons* who have been or will hereafter be recognized by practically all the civilized world as citizens of those countries.

"To take the case of Czechoslovakia, you gentlemen are doubtless advised of the fact that there is a Czechoslovakian Legation in Washington today with a charge d'affaires. While we have not become a party to any treaty which definitely recognizes that Republic, nevertheless here is the Czechoslovakian Legation right in our midst. I think this is a highly important consideration and that all Americans who have come in contact with the problem have already acceded to in their own minds, namely, that the war has accomplished cer-

tain definite changes of territory, changes of sovereignty, and changes of citizenship in Europe. (Page 15 of the Hearing.)

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"Mr. Boggs. Mr. Chairman, there are a few small textual amendments that we have made which do not in any wise alter the meaning of the bill but which, I think, will help to clarify it. I have had two copies made for the convenience of the committee.

"The Chairman. Very well.

(The amendments suggested by Mr. Boggs are as follows:)

"In subsection (b): Insert on page 7, line 19, immediately following the words 'and Japan (of the other part),' and before the sentence beginning with the words 'And the receipt of'—

"For the purpose of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria or Hungary, shall be deemed to be a citizen or subject of such nation.'

And in lieu of the above, delete the following:

"In subdivision (1), the phrase immediately following the word 'Austria-Hungary,' reading '(including any State or free city in the four nations last named)."

"In subdivision (6), the phrase immediately following the word 'Hungary,' reading '(including any State of free city in the four nations last named).'"

"In lines 4-5, page 7, the phrase immediately following the word 'Hungary,' reading '(including any State or free city in the three nations last named).'" (See note 2.)

Mr. Boggs. May I suggest that any purely clerical errors or the mispelling of words be corrected by the clerk.

Mr. Chairman. Certainly.

"Is there anything else which you desire to submit?

"Mr. Boggs. No.

"The Chairman. You have considered paragraph 2 on page 4 and paragraph 3 on page 4, which are embodiments of bills introduced by Congressmen Winslow and Butler?

"Mr. Boggs. Yes, sir.

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2. Here Mr. Boggs suggested that a definition should be given of who were to be regarded as citizens of Germany, Austria or Hungary, and he defined them as being citizens and subjects of a state that formed a part of the territory of those countries. He also had called to his attention by the Chairman of the Committee the fact that (2) and (3) of Section 9(b) embodied the bills introduced by Congressmen Winslow and Butler, and asked further whether the Department of Justice or the Alien Property Custodian had any objection to these provisions, he answered, "No."

Mr. Boggs made no comment upon Subsection (6), because, found as it was among references to those with German nationality, it was readily understood and accepted by the Committee to apply only to corporations organized in countries with which we were at war.

It will also be observed that Mr. Boggs suggested the amendment which defined "citizens and subjects" of Germany, Austria or Hungary as those who occupied the territory of those three nations.

"The Chairman. As far as you know, the Department of Justice and the Alien Property Custodian have no objection?

"Mr. Boggs. No, sir. (Page 17 of the Hearings.)

STATEMENT OF MR. RALPH W. S. HILL, ASSISTANT SOLICITOR, DEPARTMENT OF STATE

"Mr. Hill. * * * But the feeling of the State Department was this: We would not like to continue to hold property of French citizens, although they at one time, because of conditions existing prior to the war, may have been German citizens, and the French Government has been pressing us very strongly on that point. Also, in the case of Czechoslovakia we have recognized an independent government. While the exact territorial boundaries of that State will probably have to be determined by the appropriate treaties of peace, the United States does not necessarily have to be a party to such treaties. In other words, Austria surrenders territory and Cechoslovakia acquires it, and any treaty which determines that status would be sufficient, whether we are a party to it or not. Of course, while we are still at war with Austria, this change of status could not, without our consent, affect our rights to property taken over.

"It is only by laying down such rule as that embodied in the bill that can determine who is a Czechoslovak. The citizenship status of a *person* depends upon the law, or treaties, of the State claiming him, aside from conflicting claims by two States as to the *citizenship of any person*, one State is not disposed to dispute the statement of another that a *person is a citizen*. For instance, in a case where there is no conflict of citizenship between two countries I think any country will ac-

cept the statement of the United States that a *person is an American citizen.* (Page 24 of the Hearings.) (See Note 3.)

"Mr. Hill. Yes. It is more or less basic that before a *person* in Alsace-Loraine could become a Frenchman, Germany had to surrender her rights to that territory. Now, this having been done by the treaty of Versailles, there cannot be any question, so far as Germany is concerned, with respect to the fact that these *persons* who have acquired

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3. Mr. Hill represented the Department of State in presenting this measure to the Committee. He stated that the citizenship status of a *person*, referring to this bill, depends upon the law of the state claiming him, and added that one state is not disposed to dispute the statement of another that a *person* is a citizen.

Again, we are reminded of the fact that "person" under this Act includes corporations, and his statement was, in effect, that no state would dispute the claim of another state that a corporation was a citizen of that state.

Again, he stated with reference to Alsace-Loraine, that the return of the property of those *persons* who had acquired friendly citizenship would in no way be affected any negotiations between Germany and the United States, while the return of their property would favorably affect the relations of this Government with France. He used the words "persons" as synonymous with "citizens." He used it as describing those of Alsace-Lorraine whose property would be returned under Subsection (1), and he used the word which by the definition in the Act included corporations.

He also called attention to the irritation shown by neutral countries on account of the retention of property of their citizens, and to the embarrassment thus caused the State Department. If appellant was not a citizen of Switzerland what was it?

French citizenship under the treaty are no longer Germans. Germany, therefore, has no further interest in their property, and its return would in no way affect any negotiations between that country and the United States, while it would favorably affect this Government's relations with France. (Page 25 of the Hearings.)

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"The Chairman. Does the seizure and retention of this property, by the Alien Property Custodian, of citizens of Czechoslovakia, Jugo-Slavia, Bulgaria, Turkey, and Alsace-Lorraine, involve any embarrassment on the part of the State Department?

"Mr. Hill. It does; yes, sir. In addition to that, *they have taken the property of citizens of Switzerland, Holland, and other neutral countries,* who at the time, by reason of residence in Germany *or otherwise, were included in the term enemy.* We have taken over that property, and under the present wording of the act the custodian cannot release it, and the Attorney General cannot upon application act favorably, because it was, technically, enemy property at the time. We have a number of cases of that kind, and they are *causing a great deal of embarrassment.* (See Note 4.)

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4. Mr. Hill here calls attention to the fact that the property of citizens of Switzerland and other neutral countries, by reason of residence in Germany or otherwise, were included in the term "enemy." He stated that we have taken over that property because it was technically enemy property, and he said that there were a number of cases of that kind which were causing a great deal of embarrassment.

Asked again as to whether the relief would extend

"I may also refer to the case of Czecho-Slovakia. This Government has recognized the Government of Czecho-Slovakia. Congress made an appropriation for a minister to that country and we have accredited a minister there. This Government has recognized the existence of that country through the Executive, and yet we continue to hold the property of its citizens, which we cannot release at this time without an amendment of the act, because they were enemies at the time the property was taken over. The Czecho-Slovak Government has pressed us a good deal for the return of that property. Conditions in Czecho-Slovakia, Poland, Jugo-Slavia, etc., are very serious and the return of their citizens' property, in view of the very advantageous rates of exchange at this time, would be of material assistance in the rehabilitation of those countries.

"Take the case of Poland; the same situation exists there. We have a great deal of Polish property. Where the Poles were residing in that part of Poland which was formerly Austria-Hungarian or German territory, the department has been very much embarrassed because there is no discretion with the Attorney General to return such property. There has been considerable *irritation shown by the various neutral countries* and considerable pressure by these new associated States, such as Poland and Czecho-Slovakia and also Jugo-Slavia, which is a part of the Kingdom of the Serbs, Croats and Slovenes. We continue to hold the property of their citizens, although they were our associates during the war.

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to citizens of Sweden and Norway, he replied that *paragraph (1) permits the return of property to a citizen or subject of any nation other than Germany, Austria, Hungary or Austria-Hungary, and that it permitted the return of all such property.*

"Mr. Denison. Under the terms of this bill can that situation be met in the case you referred to of citizens of Sweden and Norway?

"Mr. Hill. Paragraph 1 on page 4 permits the return of property of 'a citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary (including any State or free city in the four nations last-named).' That would permit the return of *all* such property." (Pages 26 and 27 of the Hearings.)

Thus the Committee was advised, by the representative of the Department of Justice, and by the representative of the State Department, that (1) included the property of corporations, and that all the property of neutrals, including those of the countries cut off from Germany and Austria, would be returned.

There was never a suggestion in this discussion that (6) would prevent the return of property belonging to corporations of neutral countries. By the use of the word "person" as applicable to (1) it was expressly stated that (1) included corporations.

By the proviso in (8) referring to these countries cut off from Germany and Austria and made free by the treaties, and by the use of the word "person" in that proviso, it was expressly stated that (1) included corporations of those countries, and of course corporations of those countries stood upon no better footing than corporations of neutral countries. If (1) included corporations, it included those of neutral countries as well as those of countries recently cut off by treaty from Germany and Austria, and thereby made neutral.

Great Britain had, in 1916, undertaken to disregard the rule denying the right to go behind the corporate

entity and inquire as to the nationality of stockholders, which prior to that time had been its established practice.

Assistant Attorney General Warren, in a communication addressed to the Chairman of the House Committee, with reference to the act of 1917, said:

> "It is intended by this bill to avoid all the confusion and difficulties which have arisen in England by the attempt on the part of the courts to go behind the corporate charter and corporate entity. *Continental Tyre & Rubber Co., Ltd., v. Daimler Co., Ltd.* (1915), 1 K. B., 893; *Daimler Co., Ltd., v. Continental Tyre & Rubber Co., Ltd.*, (1916 House of Lords), 2 A. C. 307. (Hearings before Committee on Interstate and Foreign Commerce on H. R. 4704, p. 96.)

The question of disregarding the entity of a corporation, and undertaking to treat it as an enemy because stockholders of the corporation were citizens of countries with which we were at war, had been fully considered when the first Trading with the Enemy Act was passed, and again in 1918, when it was amended, and Congress determined, when we were still at war, not to class as an enemy a corporation on account of the nationality of its stockholders.

The appellant here is a Swiss corporation. The treaty with Switzerland of 1850, Articles 1 and 2 (which is to be liberally construed, *Hautenstein v. Lyhan*, 100 U. S., 483), seeks to give protection to Swiss nationals in the United States to the same extent that American nationals are given protection in the United States.

The language is:

> "No pecuniary or other more burdensome conditions shall be imposed upon their residence or establishment or the enjoyment of the above mentioned rights than shall be imposed upon citizens of the country where they reside nor any condition whatever to which the latter shall not be subject."

To put upon a Swiss corporation the burden imposed by the retention of its property, when the same rule did not apply to a corporation of the United States, would have violated our treaty with Switzerland. The United States does not violate her treaties, and it cannot be believed that Congress intended to legislate in such a manner. From every standpoint, it is only just that the property of appellant should be promptly returned to it.

Appellant had engaged in business in a friendly nation. It had a larger amount of property in the hands of the Custodian than any other Swiss citizen. The Swiss Minister had, by direction of its Government, applied to the Secretary of State for the return of this property. It desired to use the property to again begin its business in the United States.

Appellant had been allowed to continue its business in the United States until after the Armistice by a permit from the United States Government. It was inexcusable to have then seized its property, as the war had practically ended.

It was with reference to the protests of the Swiss Minister in connection with this property that the Secretary of State called attention to the embarrassment under which we were operating in our relations with Switzerland.

CONGRESS MEANT BY SUBSECTION (1) TO PROVIDE FOR THE RETURN OF CORPORATE AS WELL AS INDIVIDUAL PROPERTY.

The Secretary of State did not request that only the property of individuals of neutral countries should be returned. He requested that all the property of nationals, citizens or subjects of neutral countries should be returned. The Attorney General advised the Committee that the bill would meet the suggestions of the Secretary of State. He furthermore stated that Subsection (b) would return all enemy property except that held by persons who were in fact bona fide subjects or citizens of Germany, Austria or Hungary.

The Attorney General also said that Subdivision (1) would return to "persons," which included corporations, property sequestered because of the fact that they were doing business within enemy territory, provided they were not citizens of enemy countries.

The Committee report called attention to the fact that they had amended the bill by providing that:

> "For the purposes of this section, any citizen or subject of any nation, state, or free city, which at the time of the proposed return of money or other property herein forms a part of the territory of any one of the following nations: Germany, Austria, Hungary and Austria-Hungary, shall be deemed to be a citizen or subject of such nation."

Thus appellant, by the definition of "citizen and subject" in the Committee amendment, was excluded from being a citizen or subject of Germany, Austria or Hungary.

The House Committee unanimously reported in favor of the bill. The Senate Judiciary Committee had before it representatives of the State Department and

of the Department of Justice, but no report was printed of these hearings. I cannot with propriety refer to what took place, but it is a matter of record that the Senate Judiciary Committee printed only the letter of May 11, 1920, from the Attorney General, and that of May 5th from the Secretary of State, for the use of the Senate.

The House Committee, in reporting uanimously in favor of the passage of the bill, passed it upon the basis of these same letters. The Senate passed the House bill the day it reached the Senate, without referring it to the Judiciary Committee and without amendment. These two letters were the only explanation, the one of what was desired by the Secretary of State, and the other of what the bill would accomplish, and they caused the action of each House of Congress. The intention of Congress was to pass legislation carrying out the wishes of the Secretary of State as explained in his letter and by the Attorney General.

Under these circumstances, is it possible to find any other purpose on the part of Congress except to return all property of citizens of neutral countries, and to return the property of this appellant?

Congress could not have justified itself in any other action. It is inexcusable to retain this property longer. Appellant should be allowed at once to establish its business here.

As Exhibit A to this supplementary brief, we attach in full the report of the Committee on Interstate and Foreign Commerce of the House, containing the letters of the Attorney General and of the Secretary of State, and as Exhibit B all of Subsection (8) of Section 9b.

Respectfully submitted,

HOKE SMITH,
Attorney for Appellant.

EXHIBIT A.

Report of Committee on Interstate and Foreign Commerce.

66TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1089.

TO AMEND TRADING WITH THE ENEMY ACT.

JUNE 2, 1920.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Esch, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 14208.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 14208) to amend section 9 of an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, having considered the same, report thereon with amendment and as so amended recommend that it pass.

The bill has the approval of the Departments of Justice and State, as will appear by the letters attached and which are made a part of this report.

Amend the bill as follows:

Strike out the word "the" in line 11, page 3, and insert the word "such" in lieu thereof.

In line 12, page 3, strike out the word "other."

Strike out all of line 12, page 3, after the word "property"; all of line 13 and all of line 14 up to the word "shall."

In line 1, page 4, substitute a comma for the semicolon after the word "States."

Strike out the words included in the brackets in lines 9 and 10, page 4.

Substitute the word "such" for "his" in line 11, page 4.

In line 17, page 4, strike out the date "August 4, 1914," and insert in lieu thereof the date "April 6, 1917."

In line 25, page 4, strike out the date "August 4, 1914," and insert in lieu thereof the date "April 6, 1917."

In line 1, page 5, strike out the comma after the word "Austria-Hungary" and the remainder of line 1, all of line 2, and all of line 3 up to the word "and."

Strike out the words included in the brackets in lines 4 and 5, page 6.

Strike out the words included in the brackets in lines 4 and 5, page 7.

After the word "part" in line 19, page 7, insert the following: "For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation."

The purpose of the above bill is to amend section 9 of the trading-with-the-enemy act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him under the provisions of the above act.

* * * * * * * * *

In view of the fact that 19 months have elapsed since the signing of the armistice and during this period an actual state of peace has existed, there have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian. This is true as to many women who were American citizens and who had married enemy aliens prior to our declaration of war April 6, 1917, and who were possessed of property not acquired directly or indirectly from any subject or citizen of Germany or Austria-Hungary.

Another class of claimants are interns who were taken from German merchant vessels and detained in internment camps in the United States. While most of these interns have returned to Germany about 100 of them have remained and will doubtless become citizens. The property thus taken over by the Alien Property Custodian belonging to them at the time of their internment amounted to approximately $2,000,000.

Another class consists of diplomatic or consular officers who were citizens or subjects of Germany or Austria or Hungary or Austria-Hungary at the time of the severance of diplomatic relations between the United States and such nations. In some instances their property was taken and is still being held by the Alien Property Custodian, notwithstanding that claims therefor have been made through diplomatic channels. The United States, while holding approximately $556,000,000 worth of private property which it found in this country belonging to individual citizens of enemy countries residing in their country at the outbreak of the war and still residing there, does not intend to confiscate this property. It was the intention of Congress when the property was taken that it should merely be held in custody during the war and that after the war the property or its proceeds should be returned to the owners. It has never been the purpose or the practice of the United States to seize the private property of a belligerent to pay our Government's claims against such belligerent. Such practice is contrary to the spirit of international law throughout the world. The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State. For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe. For these reasons the committee favorably reports the bill as above amended.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 31, 1920.

HON JOHN J. ESCH,
Chairman of the House Committee on Interstate and Foreign Commerce,
Washington, D. C.

SIR: The Secretary of State has written to me that this Government has recognized that the Provinces of Alsace and Lorraine have now become a part of France and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these Provinces who have acquired French nationality under the Versailles treaty of peace can not fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the trading with the enemy act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.

The Secretary of State also points out that this Government has recognized the Republics of Poland and Czechoslovakia and the Kingdom of the Serbs, Croats, and Slovenes, and that for this Government to retain the property of persons who are citizens of those countries and resident within their borders would have a prejudicial effect upon the relations between the countries in question and the United States. The Secretary of State's recommendation was that any amendment to the trading with the enemy act should be broad enough to authorize the return of property belonging to citizens of these countries. He also felt that the amendment should cover the cases of residents of territory which may be allotted, under treaties yet to become effective, to an allied or associated power (as, for example, Trieste), as well as territory which, under plebiscites to be held in accordance with treaty provisions, may be allotted to a neutral country (as, for example, that portion of Schleswig which may be allotted to Denmark).

I am herewith forwarding to you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your conveneince, I shall briefly analyze its provisions and indicate the change which it would make in existing law.

Section 9 has been divided into subsections. Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an "enemy or ally of enemy" as those terms are used in that act.

The first portion of subsection (b) provides for the relief of citizens of allied countries resident in territory which was occupied during the war by the armed forces of the enemy. Relief was extended to this class of persons in the amendment to section 9 contained in the general deficiency appropriation act approved July 11, 1919. The phraseology has been changed slightly to provide relief in a small number of cases which have been thought not covered by the amendment of July 11, 1919.

The next portion of subsection (b), which is the only important new matter covered by the proposed bill, provides for the return of property to all those whom the President determines to be citizens of a nation, State, or free city other than Germany or Austria-Hungary who, at the time their property was taken over by the Alien Property Custodian, were resident in territory belonging to Germany, Austria-Hungary, Bulgaria, or Turkey, which, by reason of treaty provisions, has since been incorporated within the territory of other States and nations or has been placed under the direction of the League of Nations. The amendment is so framed that it will apply to territorial changes which will result from peace treaties with Austria-Hungary, Bulgaria, and Turkey which have not yet become effective in Europe, as well as territorial changes growing out of future plebiscites. The territorial changes, however, must have been completed and must be in effect before they are made the basis for returning property under the proposed amendment.

Subsection (c) contains a new provision giving all those covered by subsection (b) the right to bring suit for their property in the manner provided for in subsection (a), which contains the original provisions of section 9.

Subsections (d) and (e) contain the same general provisions relative to the effect of section 9 which were in section 9 as originally enacted.

I am not in favor of piecemeal legislation dealing with enemy prop-

erty, but I feel that the situation presented to me by the Secretary of State may call for special treatment in view of the effect of the present situation upon our foreign relations. The amendment to section 9 contained in the act of July 11, 1919, provided special relief for certain citizens of foreign countries. The last mentioned amendment may be considered a precedent for giving special relief where our foreign relations would seem to require it.

I shall be glad to furnish you, on request, any further information at my command in connection with the inclosed bill.

Respectfully,

A. MITCHELL PALMER,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., April 22, 1920.

Hon. JOHN J. ESCH,
United States Senate, Washington, D. C.

MY DEAR MR. ESCH: I am in receipt of your letter of April 19 and regret to learn that through inadvertance, the copy of the legislation suggested to meet the views of the Department of State, was not inclosed in my letter of March 31. In the meantime, I have been informally advised by representatives of the State Department that it was expected that within the next few days the Secretary of State would submit some further suggestions which would alter to some extent the phraseology of the proposed legislation.

For this reason I shall defer for a few days the transmission of the proposed draft to you.

With kindest personal regards, I remain,

Sincerely,

A. MITCHELL PALMER.

DEPARTMENT OF STATE,
Washington, May 5, 1920.

The ATTORNEY GENERAL.

SIR: I have the honor to refer to my letter of March 23, 1920, concerning an amendment to section 9 of the trading with the enemy act, authorizing the release of property taken over by the Alien Property Custodian belonging to enemy persons who, by virtue of the peace treaties, become citizens, subjects, or nationals of countries other than Germany, Austria, or Hungary. In addition to the classes of property referred to therein, I believe that any amendment to section 9 should also contain provisions permitting the return of all property which, at the time it was taken over by the Alien Property Custodian, belonged to nationals, citizens, or subjects of the United States, as well as those of neutral or friendly States and of Turkey and Bulgaria.

The various neutral and allied States whose nationals' property has been taken over by the Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or otherwise, for some time have been pressing for the release of such proprty. It appears that the Department of Justice has ruled that, under the trading with the enemy act in its present form, it is not in a position to release this property. During the actual conduct of hostilities it may have been advisable to retain such property. In view, however, of the cessation of hos-

tilities, this department feels that the Government should no longer retain this property, even though a technical state of war may still exist. To do so would undoubtedly create an unfavorable impression in the States concerned, and would be of no advantage to the United States in its negotiations with enemy countries.

With reference to Turkish and Bulgarian property, it may be stated that early in the war the Alien Property Custodian, upon the request of this department, agreed not to seize any such property. This request was based partly on the ground that American interests in Turkey and Bulgaria, particularly in the former, were, it appears, of a much greater value than the interests of Turkish and Bulgarian nationals in this country, and partly on other reasons of policy. American property, it seems, has not been taken over in either of those countries. In view of this, and since the United States has not been at war with Turkey and has not even severed relations with Bulgaria, the department feels that authority should be obtained for the release of any Turkish or Bulgarian property which, through inadvertance or otherwise, may have been taken over by the custodian, notwithstanding the assurances of his office that such property would not be seized.

In order that the practice of this Government should accord with international usage and in order that American diplomatic and consular property in enemy countries would be duly respected and not interfered with, the department after the outbreak of the war requested the Alien Property Custodian to refrain from taking over enemy diplomatic or consular property or personal property and effects in this country by reason of the owners having been diplomatic or consular officers of an enemy State accredited to this Government at the time of severance of relations.

The custodian not only agreed to comply with this request but, it seems, informed the Swedish Legation in charge of Austrian interests in this country that he would not take over such property. It appears, however, that there have been several instances in which property of this nature has been taken over either through inadvertance or through a misunderstanding as to the former official status of its owner. The department feels very strongly that such property should be released but, to its embarrassment, has been unable so far to obtain favorable action on any application for its return. If, as it is understood to be the position of the Department of Justice, an amendment to the act is necessary before this can be done, I trust that the proposed amendment to section 9 will contain a provision authorizing the return of any enemy diplomatic or consular property or private property and effects in this country by reason of the owner having been accredited to this Government as a diplomatic or consular officer of any enemy state at the time of the severance of diplomatic relations with the State of which he was a representative.

I have the honor to be, sir,

Your obedient servant,

BAINBRIDGE COLBY.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 11, 1290.

Hon. J. J. ESCH,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

SIR: Referring to my letter of March 31, concerning certain legislation amendatory to section 9 of the trading with the enemy act to be submitted to your committee at the suggestion of the Secretary of State, as stated to you in my letter of April 22, through inadvertence the draft of the proposed legislation was not inclosed in the letter of March 31, and thereafter the Secretary of State requested that the matter be held up so that certain additional relief, which he considered necessary to give, might be incorporated in the proposed amendment. These suggestions he has since furnished to me, and the inclosed draft of a bill, amending section 9, has been drawn with a view to meeting these suggestions. I am also inclosing a copy of his letter to me, dated May 5, 1920, in order that your committee may have the benefit of the information which it contains.

The relief called for by this letter required extensive changes in the text of the bill which was designed to accompany my letter of March 31, and accordingly I will reanalyze its provisions, and indicate the change which it would make in existing law.

Section 9 has been divided into subsections.

Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act, as amended July 11, 1919, except as follows:

(1) The portion of said section now in force dealing with the return by the President of property belonging to a person who was found to be an enemy solely by reason of residence in territory occupied by the enemy has been stricken, the relief coverd thereby being afforded by subsection (b) of the proposed bill.

(2) The second paragraph of section 9 as now in force is reenacted as subsection (e) of the proposed bill.

(3) The third paragraph of said section as now in force is reenacted as subsection (f) of the proposed bill.

(4) In each instance where reference is made to property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, in section (a) of this proposed draft, the phrase is added: "or seized by him." This is to cover the fact that under the amendment to the trading with the enemy act incorporated in the deficiency appropriation act approved November 4, 1918, the power to seize property was specifically conferred upon the Alien Property Custodian. This department in passing upon claims has held that the language of the present act was sufficiently broad to authorize the return of property seized by the custodian as well as that which has been conveyed, or paid to him. In order to set at rest any possible doubts on this point, however, it was deemed advisable to cover the question specifically in the proposed amendment.

Subsection (b) of the proposed amendment provides, in substance, for the return of all enemy property, except that held by persons who are in fact bona fide subjects, or citizens of Germany, Austria, or Hungary.

Under subdivision (1) thereof will be permitted the return of prop-

erty to all American citizens, wherever resident, to citizens of Turkey and Bulgaria, and to persons whose property was sequestrated because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries).

Subdivisions (2) and (4) are concerned with the return of diplomatic and consular property, whether belonging to the Governments of the enemy nations, or to the individuals who represented them in this capacity, but in the latter event, the return is limited to such as is in this country because of the official position of the owner.

Subdivision (3) returns any property of the Governments of Bulgaria or Turkey. With reference, in general, to Bulgarian and Turkish property, it was determined early in the war that it would be inadvisable as a matter of policy for the Alien Property Custodian to exercise the right which the statute conferred upon him to take property of Bulgarians and Turks, and assurances to that effect were furnished by the State Department which resulted in American property being respected in those countries. Accordingly, it is now suggested that Bulgarian and Turkish property be returned, thus rectifying the few cases in which such property was taken by the custodian prior to the giving of these assurances by the State Department, or subsequently through mistake.

The proviso, appearing at the end of the fourth subdivision, is designed to insure the like rights of return of property to former citizens of the Central Empires, who, by virtue of the changes in territory wrought by the war, have now become, or shall hereafter become, bona fide citizens of a neutral or friendly power.

Subsection (c) provides that the persons to whom the President is authorized to extend relief by subsection (b) may also have rights of return of their property by filing claims or suits therefor.

Subsection (d) preserves to the nonenemy heirs or distributees of a deceased person the rights which he might have, if alive, to procure the return of his property.

Subsections (e) and (f) are contained in the act as it now exists, and no change is made in respect to them, except the prefixing of the letters which designate them.

I have submitted this draft of proposed legislation to the Alien Property Custodian, who authorizes me to state that he has no objection to its enactment.

Any further information that your committee may desire I will be glad to furnish.

Respectfully,

A. MITCHELL PALMER.

DEPARTMENT OF STATE,
Washington, May 21, 1920.

Hon. JOHN J. ESCH,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

SIR: The Attorney General has informed me that on May 11, 1920, he submitted to you a draft of an amendment to section 9 of the trading with the enemy act, permitting the return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral States, and States associated with this Government in the World War, as well as to persons who have or will, in pursuance of treaty provisions,

become citizens or subjects of such States, for example Alsace-Lorraine, or citizens or subjects of new States which have been recognized by this Government, such as Poland and Czechoslovakia.

The draft, it is understood, is largely based on representations from this department, made in view of the fact that the Attorney General holds that under the trading with the enemy act, in its present form, he is unable to release property to owners, who when it was taken over were included, for any reason, in the terms "enemy" or "ally of enemy," as used in the act and consequently, in spite of strong representations by various neutral and associated Governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property. I hope that it will be possible to give favorable consideration to the matter, and that an amendment of the act can be passed before the recess of Congress.

In this connection, it may be stated that the early return of their property to citizens of Poland, Czechoslovakia, and other countries devastated by the war, would, especially in view of the exceedingly favorable rate of exchange, be of material assistance toward the economic and financial rehabilitation of those countries.

I have the honor to be, sir,

Your obedient servant,

BAINBRIDGE COLBY.

EXHIBIT B.

Subsection (8), Section 9(b) Amendment to the Trading with the Enemy Act, Approved June 5, 1920.

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government—
then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided,* That no *person* shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such *citizen or subject* at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, *a citizen or subject* of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy,

and Japan (of the other part). For the purposes of this section any *citizen or subject* of a State or free city which at the time of the proposed return of money or other property of such *citizen or subject* hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a *citizen or subject* of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

No. 182

In The

Supreme Court of the United States

October Term, [illegible]

SWISS NATIONAL INSURANCE CO[illegible],

Appellant,

v.

THOMAS W. MILLER, as Auditor [illegible], and FRANK WHITE, as Treasurer of [illegible],

Appellees.

PETITION FOR REHEARING OF SWISS NATIONAL INSURANCE COMPANY, Appellant.

[illegible]

Attorneys for Appellant,
[illegible]

No. 132

IN THE

Supreme Court of the United States

October Term, 1924.

SWISS NATIONAL INSURANCE COMPANY, A CORPORATION,
Appellant,

v.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,
Appellees.

PETITION FOR REHEARING OF SWISS NATIONAL INSURANCE COMPANY, *Appellant.*

Comes now the Swiss National Insurance Company, Appellant, and moves the Court for a rehearing in the above-entitled cause, and for grounds therefor says:

1. The Court failed to construe "citizen and subject" in Clause 1, Paragraph b, Trading with the Enemy Act, as amended, as including corporations.

2. The Court failed to observe that the proviso to Clause 8, paragraph b, Trading with the Enemy Act,

as amended, applied the word *"person"* to Clause 1 of said Act, *thereby expressly recognizing Clause 1 as embracing corporations in the words "citizen and subject."*

3. The Court failed to observe that the Act of July 2, 1921, ending the War, applied only to property of the Imperial German Government or German nationals. While it preserved the rights which the United States obtained under the Treaty of Versailles, the Versailles Treaty provided for the retention and liquidation of property of companies controlled by German nationals only *when such companies were organized within the territory of the Government undertaking to retain and liquidate it.* The Treaty in no way applied to corporations of neutral countries.

4. The Court failed to observe that Clauses 6 and 11 of the Trading with the Enemy Act, as amended, would have been in direct conflict unless Clause 6 was construed to apply only to corporations organized in countries with which we had been at war.

5. The Court failed to observe that the Act of June 5, 1920, was passed by Congress on the recommendation of the Committees, based solely upon the letters of the Secretary of State and of the Attorney General; that the Attorney General advised Congress that *paragraph (b) of the bill would return all property in the hands of the Alien Property Custodian except that held by persons who were in fact bona fide subjects or citizens of Germany,* Austria, Hungary or Austria-Hungary; that the Attorney General further advised Congress that *Clause 1 would return the property to those persons whose property was sequestered because of the fact that they were doing business within enemy territory;* that he expressly applied to Clause 1 the

word "persons," which included corporations; and that Congress could only have acted upon this bill with the purpose of returning the property which the Attorney General advised would be returned.

STATEMENT

This case depends upon the construction of Section 9, clause 1, paragraph b, of the Act of June 5, 1920, which reads as follows:

> "(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or"

First. The word "citizen" is applicable to Republics, and the word "subject" to monarchies.

It has been frequently recognized by this Court that the words "citizen and subject" include corporations. *Paul v. Virginia,* 8 Wall., 168; *Selova v. Walsch,* 226 U. S., 115; *Western Turf Association v. Greenburg,* 204 U. S., 359.

In England, the word "subject" has been recognized as including corporations. *Pacific Steam Navigation Co. v. Arnoud,* 25 Law Journal U. S. Part II, Com. Law No. 50, in which a British statute provided that no vessel should be registered unless the vessel wholly belonged to Her Majesty's subjects. Some of the stockholders in the corporation were foreigners. The vessel was admitted to registration.

In *The Queen v. Arnoud,* 9th Ad. and Ell. N. S., 806, Lord Denman observed:

> "The British corporation is, as such, the sole owner of the ship. The individual members of the corporation are no doubt interested in one sense in the property of the corporation, as they derive individual benefits from its increase or loss from its decrease; but in no legal sense are the individual members the owners."

In the *Bank Tax Case*, 70 U. S., 584, Mr. Justice Nelson used the following language:

> "The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred by the charter, and for the purposes for which it was created can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law and will be found in every work that may be opened on the subject of corporations."

The word "citizen" has universally been treated as including corporations in all our diplomatic correspondence. *Moore's International Law Digest*, Vol. 6, p. 641.

Mr. Secretary Hay, asked by the Secretary of War the effect upon a Spanish corporation located in Porto Rico, produced by the annexation of Porto Rico to the United States, stated that as a result of the annexation, the Spanish corporation became "as between the United States and other Governments, an American citizen." For further references to the diplomatic treatment of corporations see opinions of Secretary Olney and Secretary Seward, *Moore's International Law Digest*, pages 641, 643, *et seq.*

Second. The latter part of clause 1, paragraph b, was necessary to take care of citizens and subjects of

nations or states or free cities the territory of which was cut off from Germany, Austria, Hungary or Austria-Hungary, or which might be subsequently cut off, and whose rights were protected under the proviso of clause 8 of the Act of June 5, 1920.

(See Note "A" below, where the proviso to clause 8 is given.)

NOTE A

Proviso to Clause 8, Section 9 (b) Amendment to the Trading with the Enemy Act, Approved June 5, 1920 (which was also carried in the Act of 1923 after Clause 11).

"(8) * * * *Provided*, That no *person* shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such *citizen or subject* at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, *a citizen or subject* of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of

The suggestion that individuals alone could change their nationality might affect the construction of Clause 1, except for the proviso to Clause 8, which permitted the cutting off of large territories from Germany, Austria, Hungary and Austria-Hungary and thereby *changing the nationality of corporations as well as individuals.*

By this proviso it became possible for the nationality of many citizens and subjects to be *ipso facto* changed, and their property was to be returned when they became citizens or subjects of a nation, state or free city other than Germany or Austria or Hungary or Austria-Hungary, and this change of nationality applied to corporations as well as individuals.

Under Clause 1 of paragraph b alone, in this act, is the property of citizens and subjects of Alsace-Lorraine, of Czecho-Slovakia and of other 'erritory cut off from Germany, Austria, Hungary and Austria-Hungary to be returned to them. There was no other clause in paragraph b except Clause 1, which provided for the return of the property of those citizens and subjects whose property was located in the territory cut off or taken away from Germany, Austria, Hungary and Austria-Hungary. This was shown by Mr. Boggs, representing the Attorney General, before the

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this section any *citizen or subject* of a State or free city which at the time of the proposed return of money or other property of such *citizen or subject* hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a *citizen or subject* of such nation. (Italics ours throughout unless otherwise indicated.)

House Committee. (See Note "B" below, which contains a portion of the testimony of Mr. Boggs.)

NOTE B.

STATEMENT OF MR. LUCIEN H. BOGGS, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL.

* * * * * * *

"Mr. Dewalt. Does the proposed act have in contemplation the cases of residence of Alsace-Lorraine, occupied territory?

"Mr. Boggs. Yes, sir.

"Mr. Dewalt. How do you protect them and what rights do they receive under this act?

"Mr. Boggs. That refers to Subdivision No. 1 of subsection (b), contained on page 4 of the present draft:

> 'A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary——' as it now reads:
>
> '(including any State or free city in the four nations last named), and is at the time of the return or his money or other property hereunder a citizen or subject of any such nation or State or free city.'

"Now, that would permit the return to a *person* who was not a citizen at the time the property was taken and is not now a citizen of one of the enemy countries. In order to clarify the situation with regard to Alsace-Lorraine and other countries that have been transferred from enemy to nonenemy or friendly status, by virtue of the war, there has been inserted the proviso which is contained at the bottom of page 6 and following on page 7, the present draft of which reads: (This was the proviso to Clause 8.)

Mr. Boggs referred to those whose property was to be returned under Clause 1 as "*persons*" which word is defined in the Act to include corporations. Mr. Hill, representing the Secretary of State before the House Committee, did likewise.

Mr. Hill five times, in his testimony before the Committee, used the word "persons" as applying to Clause 1, and in response to a question by Mr. Dennison as to the effect upon citizens of Sweden and Norway, replied that Clause 1 "would permit the return of *all such property.*" (See Supplementary Brief for Appellant, pages 12 and 13.)

Mr. Boggs was also responsible for the insertion by the Committee of the definition of who should be considered citizens or subjects of Germany, Austria, Hungary or Austria-Hungary, which was as follows:

> "For the purpose of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria or Hungary, shall be deemed to be a citizen or subject of such nation."

Later on, referring to the return of Czechoslovakian property and properties of other countries similarly situated, Mr. Boggs said:

> "Mr. Boggs. But I think you will find there is nothing in the text of it that would necessarily make it objectionable to Congress, for the reason that the class of property that we are here proposing to return is essentially the property of *persons* who have been or will hereafter be recognized by practically all the civilized world as citizens of those countries."

There were corporations as well as individuals whose property was being held by the Alien Property Custodian which were located in these territories cut off or which might be cut off from the countries with which we had been at war.

The nationality of a corporation could change under the proviso to Clause 8 as well as that of an individual, and the nationality of corporations did *ipso facto* change.

It will furthermore be observed that the word "*person*" is used in Clause 8 as designating those in the territory cut off from the countries with which we were at war, to whom property was to be returned, and as above shown, the act had no provision for the return of their property except Clause 1.

The proviso of Clause 8, by declaring that "*persons*" were to have their property returned, under Clause 1 of paragraph b, *expressly stated that this clause included corporations.* The word "*person*" was not only used in connection with the right of return by those who discussed Clause 1 before the House Committee, but the word *person* is used in Clause 8 of the Act as describing those whose property was to be returned, under Clause 1.

The Act of June 5, 1920, by applying the word "persons" to those whose property was to be returned under Clause 1, provided that "a citizen and subject" in Clause 1 should include corporations.

Third. It is true that the Act of July 2, 1921, 42 Stat. L. 105, ending the War, expressly provided, in Section 5:

> "All property of the Imperial German Government or its successor or successors, and of all German nationals, which was, on April 6, 1917, in, or has since that date come into the possession

> and under the control of * * * The United States of America * * * shall be retained by the United States of America * * *."

The Treaty of Peace with Germany uses similar language. (See Article II (1), Treaty of Peace with Germany, which may be found in Meares, Trading with the Enemy Act, p. 513.)

The Swiss National Insurance Co. was certainly a Swiss national and not a German national. Its property cannot be retained and subjected to the payment of obligations of Germany to the United States or her citizens under Section 5 of the Act of July 2, 1921. If it is to be retained and subjected to the payment of our claims against Germany, the right to so retain and subject this property must be found under Section 2 of the Act of July 2, 1921, or under the Treaty of Peace with Germany. Section 2 of the Act of July 2, 1921, and Article II (1) of the Treaty of Peace with Germany preserve to the United States those rights given in the Treaty of Versailles. Any right to retain and subject the property of the Swiss National Insurance Co., by the Treaty of Versailles, must be found in Section IV, Article 297, of that Treaty. (For the portion of the Versailles Treaty here applicable, see Meares' Trading with the Enemy Act, p. 522.) This Article reads as follows:

> " * * * (b) The Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interest belonging at the date of coming into effect of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates."

It will be observed that the Treaty of Versailles did not undertake to subject to obligations of Germany the property of a corporation of a neutral country because controlled by German nationals, but only those corporations controlled by German nationals *within the territories, colonies, possessions and protectorates of the Allies.*

Instead of this act indicating that property of corporations of neutral countries controlled by German stockholders was to be held, it clearly provides that *only property of those companies within the territories of the Allies, so controlled, was to be held.*

If the corporation was located in the United States, we could have compelled it to cancel the stock of the German nationals, and issue the German stock to the Alien Property Custodian, but when the corporation is not within the United States, but in a neutral country, we cannot reach the corporation to obtain the stock of the German stockholders.

We are dealing with a neutral national, and we cannot subject the property of such a national to the payment of German debts.

The fact that the Versailles Treaty, as above quoted, limits the right to retain and liquidate the property of a corporation controlled by Germans to corporations within the territories of the Allied and Associated Powers, is a *recognition by the parties to the Treaty that their right to retain and liquidate the property of a corporation does not extend to a corporation organized outside of the territories of the respective allied nations.*

As to the United States, it is a clear limitation of the right to liquidate the property of a corporation unless that corporation was organized here, and it is

a recognition that excludes the right to retain or liquidate property of a corporation organized in a neutral country.

The fact that part of the stock of a neutral corporation is held by citizens or subjects of countries with which we were engaged in war is in no way made a basis for retaining and liquidating the property of such a corporation.

While it is true that counsel conceded in argument that a majority of the stock of the plaintiff corporation was held by Germans at the time of the seizure by the Alien Property Custodian, counsel did not concede that more than one-third of the stock is at this time, or has for the past five years, been held by Germans.

We can not compel a corporation of a neutral country to transfer stock of a German national to our Alien Property Custodian. We can not reach the property of such a corporation without violating the rights of neutral stockholders.

Fourth. The Act of March 4, 1923, clearly is a construction of Section 9b (1) of the Act of June 5, 1920.

Clause 11 permits the return of property of corporations within any country other than Germany, Austria, Hungary or Austria-Hungary, if fifty per cent of the interest or voting power is vested in citizens or subjects of nations, other than Germany, Austria, Hungary or Austria-Hungary.

Clause 6 is still retained in the Act of March 4, 1923. Clause 6 permits the return of the property of a corporation within any country other than the United States, if entirely owned by citizens of nations other than Germany or Austria or Hungary or Austria-Hungary.

To harmonize these two clauses, they must apply to

different territory. This can only be accomplished by construing Clause 11 as applying to corporations in any country other than Germany, Austria, Hungary or Austria-Hungary, and Clause 6 as applying to corporations of Germany, Austria, Hungary or Austria-Hungary.

As Clause 6 is left in this Act, and Clause 11 is added, clearly Clause 6 was considered as applying only to corporations of Germany, Austria, Hungary or Austria-Hungary. Otherwise the two would be in direct conflict, and the pasage of 11 with the retention of 6 was a practical construction of 6 as applying to corporations of countries with which we had been at war.

But if it is suggested that Clause 11 limits the meaning of Clause 1, attention should be given to the proviso of Clause 11:

> "Provided, however, that this sub-section shall not affect any right which any citizen or subject may have under paragraph 1 of this sub-section."

It was clear that there were members of Congress who knew perfectly well, in passing Clause 1 of the Act of June 5, 1920, they meant "a citizen and subject" to include corporations, and as 11 might be construed to limit the meaning of "a citizen and subject" to natural persons, it was expressly provided that 11 should not do so, and that this provision should not affect a right which any citizen or subject might have under Clause 1.

It may well be said that Clause 11 is a construction of Clause 1, but the construction would be that "a citizen and subject" in Clause 1 did include corporations.

It may be suggested that if Clause 1 provided for the return of property of neutral corporations there

was no necessity for Clause 11. There were many who were in the previous Congress who knew that they intended by the Act of June 5, 1920, to return the property of corporations of neutral countries. No member of Congress serving on a committee to which this bill was referred or who was giving particular attention to the subject-matter of the Act of June 5, 1920, could have helped understanding that Clause 1 was intended to cover corporations, and therefore the provision in the latter part of Clause 11, which was to free Clause 1 from a construction that Clause 11 limited Clause 1 to natural persons.

There were corporations of neutral countries with German stockholders, but not a majority of such stockholders, either at the time of the seizure by the Custodian or at the present time, which had interested some Congressmen who wished the immediate return of this property. Those familiar with the Act of June 5, 1920, were willing for this legislation to pass, provided it did not limit Clause 1 which they confidently relied on to return the property of all corporations of neutral countries.

Fifth. The case of *Johnson v. Southern Pacific,* 196 U. S., 14, 49 L. E., 368, known as the "Air-brake case," comes nearer to the present case than any other decision of this Court.

An Act of Congress contained, in the second section, a provision that "any car" used by the railroads in interstate commerce should be equipped with automatic couplers. Another section provided that locomotives should be equipped with power driving-wheel brakes.

Here was a specific reference to locomotives, which are not usually classed as cars, and which well might have been held as excluding locomotives from the requirement to use automatic couplers.

The Court, after stating that the question involved was whether locomotives are required to be equipped with automatic couplers, said:

> "And it is not to be successfully denied that they are so required if the words 'any car' of the 2nd section were intended to embrace, and do embrace, locomotives. But it is said that this cannot be so, because locomotives were elsewhere, in terms, required to be equipped with power driving-wheel brakes, and that the rule that the expression of one thing excludes another applies. That, however, is a question of intention, and as there was special reason for requiring locomotives to be equipped with power driving-wheel brakes, if it were also necessary that locomotives should be equipped with automatic couplers, and the word 'car' would cover locomotives, then the intention to limit the equipment of locomotives to power driving-wheel brakes, because they were separately mentioned, could not be imputed."

Chief Justice Fuller further said:

> "Tested by context, subject matter, and object, 'any car' meant all kinds of cars running on the rails, including locomotives."

The Court further said:

> "That this was the scope of the statute is confirmed by the circumstances surrounding its enactment, as exhibited in public documents to which we are at liberty to refer."

The Court then referred to the messages of President Harrison on this subject, and especially to his message in 1892, in which he called attention to sta-

tistics furnished by the Interstate Commerce Commission, showing the numbers of different styles of car couplers and the number of deaths arising from their use.

The Court further referred to the Senate report, and the House report, which mentioned the numerous and increasing casualties attributable to couplers then in use.

The contention in the present case has been that the specific reference to corporations in Clause 6 excludes corporations from Clause 1.

The Court, in the Johnson case, said:

"This, however, is a question of intention."

Can the intention of Congress be gathered from the history of the Act of June 5, 1920, as the Supreme Court held it could be gathered in the Johnson case?

In the Johnson case, there was nothing definitely or specifically before Congress showing the legislation intended to require locomotives to be equipped with automatic couplers. In the present case, the legislation was passed on the unanimous recommendation of the House Committee on Interstate and Foreign Commerce, giving as the reasons for its passage the letter of the Secretary of State, telling what he wished to accomplish, and the letter of the Attorney General explaining the provisions of the bill under consideration. The bill was passed in the Senate the day it came over from the House, the Senate Judiciary Committee having printed only the letter of May 11, 1920, from the Attorney General, and that of May 5, 1920, from the Secretary of State, for the use of the Senate.

The letter of the Secretary of State to the Attorney

General, after referring to his prior letter asking for the release of property of nationals, citizens, or subjects of countries cut off from Germany, Austria or Hungary, by virtue of the peace treaties, stated:

> "I believe that any amendment to Section 9 should also contain provisions permitting the return of *all property* which at the time it was taken over by the Alien Property Custodian belonged to nationals, citizens or subjects of the United States, as well as *those of neutral or friendly states.* The various neutral and allied states whose property has been taken over by the Alien Property Custodian by reason of residence in enemy or ally of enemy territory or otherwise have for some time been pressing for the release of their property. * * * This department feels that the Government should *no longer retain this property*, even though a technical state of war may still exist. To do so would undoubtedly *create an unfavorable impression in the states concerned*, and would be of no advantage to the United States in its negotiations with enemy countries."

The Secretary of State, therefore, asked for legislation which would release *all* the property of *neutral nationals, citizens or subjects.* He did not except the property of corporations; "*all* the property" included the property of corporations. The greater part of the property of nationals, citizens and subjects of neutral countries was the property of corporations and it was taken over because these corporations were doing business in enemy countries at the time our Government entered the war.

The Attorney General, in his letter of May 11th, after referring to the letter of the Secretary of State, advised the Committee that:

> "The enclosed draft of a bill amending Section 9 has been drawn with a view to meeting these suggestions." (The suggestions of the Secretary of State.)

He further stated that the relief called for would require extensive changes in the text of the bill, "and accordingly I will reanalyze its provisions, and indicate the change which it would make in existing law."

Omitting the reference by the Attorney General to Paragraph (a), and coming to the Attorney General's reference to the specific provisions under consideration, he said:

> "Subsection b of the proposed amendment provides in substance for the return of *all enemy property except that held by 'persons'* who are in fact bona fide subjects or citizens of Germany, Austria or Hungary. Under subdivision 1 there will be permitted the return of property to all American citizens, wherever resident, to citizens of Turkey and Bulgaria, and to *'persons' whose property was sequestered because of the fact that they were doing business within enemy territory* (provided they are not citizens of enemy territory)."

The Congress accepted this statement of the meaning of the bill. There was really a strong sentiment in favor of returning all the property in the hands of the Alien Property Custodian.

The letter of the Attorney General explained to Congress that Paragraph b of the bill would return *all the enemy property except that held by "persons"* who were in fact bona fide subjects or citizens of Germany, Austria, Hungary or Austria-Hungary. The Swiss

National Insurance Co. was certainly not a subject or citizen or Germany, Austria or Hungary. He explained that Clause 1 would return the property to those *"persons"* whose *property was sequestered because of the fact that they were doing business within enemy territory.* The property of the Swiss National Insurance Company was sequestered by the Alien Property Custodian solely because it was doing business within enemy territory. *He expressly applied the term to Clause 1, which included corporations, and thus told Congress that, as drawn, Clause 1 would apply to corporations.* How can there be any doubt about what Congress meant to do, with this explanation by the Attorney General of the bill?

In their usual meaning, the words "citizens and subjects" included corporations. Congress was asked by the Secretary of State to return *all the property of neutrals, not excepting corporations,* and the Attorney General advised Congress that the bill he sent them would return *all the property* in the hands of the Custodian except that held by *"persons"* who were in fact bona fide subjects and citizens of Germany, Austria, or Austria-Hungary, that it would return the property to those *"persons" whose property was sequestered because of the fact that they were doing business within enemy territory.*

The Attorney General applied to Clause 1 the word which by definition in the Act included corporations. He advised the Congress that Clause 1, using the words, "a citizen and subject" would include corporations. There never was presented to Congress a bill where the meaning of the bill was more clearly before them.

The Committee on Interstate and Foreign Commerce of the House, declared in its report:

> "It was the intention of Congress, when the property was taken, that it should merely be held in custody during the war, and that after the war the property or its proceeds should be returned to the owners. *It has never been the purpose or the practice of the United States to seize private property of a belligerent to pay our Government's claims against such a belligerent.* Such practice is contrary to the spirit of international law throughout the world. *The reasons for the pending enactment are clearly set forth in the accompanying communications from the Attorney General and the Secretary of State.*"

From the time when Alexander Hamilton wrote his famous Camillus letters down to the day of the passage of the Act of June 5, 1920, it had never been the purpose or the practice of the United States to confiscate the private property of a belligerent to pay our Government's claims against such belligerent. I press my views of the meaning of Clause 1, as from the record of what transpired there can be no doubt about what Congress intended; and confidently rely upon the *Act as passed* and *the history of the legislation* as shown in this petition for rehearing to convince the court our construction is correct, if this petition is thoroughly examined.

Congress certainly could not have been excused if it had intended by the Act of June 5, 1920, not to return the property of a neutral corporation which had engaged in business here under the protection of our laws.

Especially is this true when the Swiss Minister, by direction of the Swiss Government brought to the attention of our Government through the Secretary of State, the rights of the Swiss National Insurance Company, urging the return of its property, and this is shown in the Bill of Complaint. Record, p. 2.

WHEREFORE your petitioner prays that the mandate issued to the trial court herein be recalled and that a rehearing may be granted and such further proceedings be had as may be in accordance with law and justice.

SWISS NATIONAL INSURANCE COMPANY,
By HOKE SMITH, *Its Attorney.*

COMES NOW HOKE SMITH, counsel for appellant, and certifies that in his opinion this petition for rehearing is well taken in point of law and is not made for the purpose of delay.

HOKE SMITH.

EXHIBIT ONE

Section 9 (b) Trading with the Enemy Act, as amended by the Act of March 4, 1923.

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"(1) *A citizen or subject* of any nation or State or free city *other than Germany or Austria,* or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States) and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman

either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary, and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of Sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals *outside the United States,* or a corporation incorporated within any country *other than the United States, and was entirely owned* at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other properey hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

"(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary or Austria-Hungary, or who is not a citizen or subject of any nation, State or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided,* That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

"(10) A partnership, assication, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided,* That no insurance partnership, association or corporation against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

"(11) A partnership, association, or other unincoroporated body of individuals, having its principal place of business within any country other

than Germany, Austria, Hungary or Austria-Hungary, or a corporation, or organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided, however* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;—

Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian.

Provided, That no *person* shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such *citizen or subject* at the time first specified in this sub-section, if he has become or shall become, ipso facto or through exercise of option, *a citizen or subject* of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part)

and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any *citizen or subject* of a State or free city which at the time of the proposed return of money or other property of such *citizen or subject* hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a *citizen or subject* of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

INDEX

AUTHORITIES

In the Supreme Court of the United States

OCTOBER TERM, 1924

SWISS NATIONAL INSURANCE COMPANY, A corporation, appellant
v.
THOMAS W. MILLER, AS ALIEN PROPERTY Custodian, and Frank White, as Treasurer of the United States, appellees
No. 132

BRIEF FOR APPELLEES

STATEMENT OF THE CASE

The appellant, a corporation organized under the laws of the Republic of Switzerland, authorized under its charter to do a reinsurance business in Switzerland and elsewhere, and doing business in Germany until January 1, 1922, filed its bill of complaint in the Supreme Court of the District of Columbia asking judgment against the Alien Property Custodian and the Treasurer of the United States for the return of certain property belonging to it seized November 18, 1918, under the Trading with the Enemy Act. Upon a motion to dismiss, judgment was for appellees. This judgment was affirmed by the Court of Appeals

of the District. The case is here on appeal from that court.

The property involved was seized as that of an enemy under the Act, the word "enemy" being defined by Section 2(a) as including "any corporation * * * incorporated within any country other than the United States and doing business within" (the) "territory of any nation with which the United States is at war." No question is raised as to the lawfulness of the seizure when made.

The two questions in the case are:

(1) Did the appellant, by the ending of the war alone, cease to be an "enemy" within the meaning of the Act, and, if so, was it thereupon and upon its ceasing to do business in Germany entitled in equity to the return of its property?

(2) If the appellant was not, without further legislation, entitled in equity to the return of its property upon the ending of the war and its ceasing to do business in Germany, then did it become entitled in equity to a return of its property by reason of the amendment to the Act approved June 5, 1920?

The questions are here stated and will be herein discussed in the reverse order from that in which they are considered in appellant's brief.

Appellees answer both questions in the negative.

ARGUMENT

I

The appellant did not by the ending of the war alone cease to be an "enemy" within the meaning of the Act so as to be then entitled in equity to the return of its property.

One of the theories of the appellant's case is that with the ending of the war it ceased to be an enemy and that, the reason for the possession of its property having ceased, it is entitled to the return thereof even under the provisions of the original act as it was before the amendment of June 5, 1920.

The only provisions of the original act referring to the return of property taken over by the Alien Property Custodian are two, the first of which appellant mentions in his brief and in part relies on. These provisions are Sections 9 (being Section 9(a) of the Act as amended) and 12. So far as pertinent, they follow:

> SECTION 9. Any person, not an enemy or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned or delivered, or paid to the alien property custodian hereunder * * * may file with the said custodian a notice of his claim under oath * * * if the claimant shall have filed the notice as above required * * * said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity. * * *

> SECTION 12. * * * After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian * * * shall be settled as Congress shall direct: Provided, however, That on order * * * of the court, as set forth in Sections nine and ten hereof, the alien property custodian * * * shall forthwith convey, transfer, assign, and pay to the person * * * in whose behalf the court shall enter any final judgment or decree, any property of an enemy or ally of enemy held by said custodian. * * *

The argument of the appellant is that when the war ended appellant ceased to be an enemy, since, there being no war, there could be no enemies, and that, therefore, appellant was entitled under the provisions of original section 9 to the relief in equity there given to "any person not an enemy or ally of enemy."

The conclusive answer to this argument is that while it is true that, in a certain sense, appellant and all others who had been enemies, upon the termination of the war ceased to be enemies, they did not cease to be "enemies" within the meaning of this act, including section 9. For the purposes of the Act the term "enemy" is defined by the Act itself (section 2 thereof) as, among others, "any corporation * * * incorporated within any country other than the United States and doing business within" (the) "territory of any nation with which

the United States is at war." So the appellant, within the meaning of the Act, was an "enemy" when its property was seized and section 12, above quoted, makes it clear that its "enemy" status did not terminate *ipso facto* by the ending of the war. That section says that "after the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian * * * shall be settled as Congress shall direct." In other words, an "enemy" within the meaning of the Act continues after the end of the war to be an "enemy" within the meaning of the Act and can only recover his property in the manner "Congress shall direct."

The heart of appellant's argument on this point is on page 47 of its brief. Because, says appellant, corporations of the character of appellant were, by the terms of the Act, enemies only if doing business within the territory of a "nation with which the United States *is* at war," therefore, the war having ended, the enemy status ceased. The finger of counsel is pointed to the words "*is at war*," and attention directed to the present tense of the verb there employed. Reference to section 2 of the Act, however, will disclose that exactly the same qualification is stated as to each and every class of enemies therein described. So that, if appellant's argument is sound, none remained "enemies," within the meaning of the Act, after the termination of the war. If it were not clear otherwise upon the face of the Act that Congress had no such intention, section 12 makes it perfectly

clear. Certainly nothing anywhere in the Act indicates that the termination of enemy character was to be at one time as to some "enemies" and at another time as to others.

The benefit of section 9 in its original form is on its face for "any person not an enemy," that is, not an "enemy" within the meaning of the Act, which excludes appellant, which is an "enemy" within the meaning of the Act. Obviously, this section was intended for the relief of those who, not being in truth "enemies" within the meaning of the Act, had their property seized unlawfully on the erroneous theory that they were "enemies." (*Central Trust Co.* v. *Garvan*, 254 U. S. 554, 567.)

The appellant did not by the ending of the war alone under the terms of the original act become entitled to the relief here sought.

Did the amendment entitle it to that relief?

II

The amendment of June 5, 1920, did not entitle appellant to maintain a suit in equity for the return of its property.

By the amendment of June 5, 1920, certain "enemies" within the meaning of the Act, were given the right to proceed in equity to recover property theretofore taken over by the Alien Property Custodian.

The only debatable question in the case is whether the appellant falls within the class of "enemies" to which this right was given. And that depends upon the meaning of subdivisions (b) and (c) of section 9,

as amended, of which so much as is here pertinent follows:

> (b) In respect of all money or other property conveyed, transferred, assigned, or delivered or paid to the Alien Property Custodian or seized by him * * *, if the President shall determine that the owner thereof * * * was
>
> (1) a citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or
>
> * * * * *
>
> (6) a partnership, association, or other unincorporated body of individuals outside the United States or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany, or Austria, or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property;
>
> * * * * *
>
> (c) Any person whose property the President is authorized to return under the provision of subsection (b) hereof * * * may institute suit in equity to recover such property * * *

If the appellant was, when its property was taken over by the Alien Property Custodian, a "citizen or subject" of a country other than Germany or Austria

or Hungary or Austria-Hungary within the meaning of the words "citizen or subject" as employed in subdivision (b) (1) of section 9, then it is entitled to recover in this proceeding unless it is excluded by subdivision (b) (6) of section 9 as a "corporation * * * (not) entirely owned * * * by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary." Of these questions then in their order.

We concede that the word "citizen" as used in a constitutional provision or a statute is often to be construed as including corporations as well as natural persons. More than that is not held in any of the cases cited in this connection in the brief of appellant. Doubtless it will be conceded, on the other hand, that the word "citizen" does not necessarily and always include corporations. (*Paul* v. *Virginia*, 8 Wall. 168; *Selover, Bates & Co.* v. *Walsch*, 226 U. S. 115; *Western Turf Association* v. *Greensburg*, 204 U. S. 359.) Whether it does in a particular case depends upon the general intent as that is gathered from the whole language of the Act in question. (*United States, etc.*, v. *Northwestern Express, etc., Co.*, 164 U. S. 686, 689.) There is a presumption also that a word is not used in different senses in the same general connection. (36 Cyc. 1132; *Pitte* v. *Shipley*, 46 Cal. 154.)

In the single sentence constituting subdivision 9(b) the word "citizen" is used eight times. In clause (1), on which appellant relies, it is "citizen or subject," who is "*at the time of the return of* * * *

property * * * a citizen or subject of any such nation * * *." The citizenship of a natural person may be in one nation at one time and in another at a later time. That is not true of a corporation. The qualification *"at the time of the return of the property"* applies only to a natural person. It indicates, not conclusively indeed, that the word "citizen" is here used only in that sense. Clauses (2) and (3) refer to a woman who was a "citizen or subject" of, etc., and to intermarriage by her with a "subject or citizen" of, etc. In these clauses obviously natural persons only are intended. In clause (4) reference is to a "citizen or subject" of Germany, etc., who was accredited to the United States as a diplomatic officer or as the wife or child of a diplomatic officer. Here also only natural persons are intended. In clause (5) the reference is to a "citizen or subject" who was transferred after arrest to the custody of the War Department, which could refer only to a natural person. And in clause (6) the reference is to "subjects or citizens" who own partnerships, associations, and corporations; that is, necessarily, natural persons. In other words, in every one of the repeated instances in these several clauses of this single sentence, including clause (1), the word "citizen" is used with other language, indicating that a natural person is intended. Granting this is not conclusively determinative, it is certainly persuasive of the conclusion that the word was not intended here to include corporations.

What makes it certain that corporations were not intended to be included in the word "citizen" as used in clause (1) is that "corporations" are specifically dealt with in clause (6), a later and equally ranking subdivision of subdivision 9.

Suppose in a single sentence it is provided that "a citizen or corporation of Switzerland" shall be entitled to recover property from the Alien Property Custodian. Would it be argued that "citizen" there includes corporations? No; the contrary is too apparent. *Yet that is exactly this case.* This is a single sentence reading (omitting intervening language in no way affecting the point made): "if the President shall determine that the owner thereof * * * was a citizen or subject of any nation * * * other than Germany * * * or a corporation incorporated within any country other than the United States and * * * entirely owned his subjects or citizens of nations * * * other than Germany * * * then the President * * * may order" the return of the property.

To say that "citizen" as used in clause (1) includes corporations of any nation other than Germany, etc., is not exactly to make clause (6), specifically dealing with "corporations," wholly inconsistent with clause (1), but *it is to make it inconsistent with clause (1) except as to a very narrow margin of thought* in clause (6). The eclipse is just short of total. The logic of the situation compels appellant to so concede. He admits that if he is right and there is no inconsistency, then clause (6), which on its face

applies to corporations "incorporated within *any* country *other than the United States*" must refer only *to corporations incorporated in Germany or Austria or Hungary or Austria-Hungary, all the stock of which is owned by citizens not of those countries.* In other words, in order to avoid an inconsistency which would destroy his case, counsel must and does excise from the comprehensive phrase "*any* country other than the United States" every particle of its natural meaning and leaves therein only a theoretical residuum of thought. Upon that his whole argument depends. Unless he is right in his contention that clause (6) was designed *solely* to add to other classes of "enemies," who might have property returned, a class made up of corporations incorporated in Germany (or the other enemy countries), not one share of whose stock was owned by any citizen of an enemy country (perhaps a theoretical but not an actual possibility), unless he is right in that contention, then one of two alternatives results: Either the word "citizen" as used in clause (1) does not include corporations, or clause (6) is inconsistent with clause (1). If the first alternative is right, that ends appellant's case. If the second alternative is right, that ends appellant's case, since, of the two clauses, if they are inconsistent, clause (6) governs.

That clause (6) can not have been intended to have the absurdly trifling meaning which appellant is driven to urge upon the court seems to us apparent and for the following reasons:

If Congress intended by clause (6) to refer only to corporations incorporated in Germany and the other enemy countries, it would certainly have been far simpler to so say, rather than to have used a phrase, "incorporated within any country other than the United States," which certainly on its face included far more than the alleged intent. Moreover, it is scarcely possible that there were any corporations of enemy countries not a single share of whose stock was owned in the enemy countries. So, on this theory, we have the absurdity of legislation for the exclusive benefit of corporations nonexisting. On the other hand there were, of course, many corporations of neutral countries whose property had been taken and none of whose stock was owned in enemy countries and which in justice were entitled to the return of such property.

The meaning urged by appellant makes clause (6) valueless. Its natural meaning gives it real significance.

There is no difficulty in giving clause (6) its natural meaning, unless it is a difficulty to say that the word "citizen" in clause (1) does not necessarily include corporations. There should be no difficulty there, since no court has ever held that the word "citizen" does necessarily and always include corporations. In each case it depends upon the context and general intent. Our choice then is the easy one of saying that "citizen" in clause (1) has its limited rather than its all-inclusive meaning or the very difficult one of

saying that Congress intended in clause (6) not only a meaning defying the words used but absurd and valueless besides.

But there is another reason for saying that the intent of clause (6) was to exclude corporations of "any country other than the United States," any of whose stock was owned by citizens of the enemy countries. Clause (6) has been given legislative construction, clearly indicating that such was the intent.

The Trading with the Enemy Act, as amended June 5, 1920, was again amended March 4, 1923. Clause (11) was then added to subdivision (b) of section 9. So far as pertinent it reads as follows:

> (11) * * * (There may be ordered the return of the property of) a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of more than 50 per centum of the interests or voting power in any such * * * corporation, was at such time and at the time of the return of any money or other property vested in citizens or subjects of nations * * * other than Germany, Austria, Hungary or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection.

Obviously, this new clause deals with the same subject matter as clause (6). It corrects therein what appellant complains of as an injustice (if clause

6 is construed according to its natural meaning), namely, the injustice of refusing to return the property of a corporation of a neutral country a *single* share of whose stock is owned in an enemy country. How does it correct that injustice? By limiting the prohibition theretofore existing to those corporations of neutral countries *at least 50 per centum* of whose stock is owned in enemy countries. That, however, is a recognition of the fact that clause (6) does forbid the return of property to a corporation of a neutral country any of whose stock is owned in an enemy country. It is a legislative construction of clause (6).

Moreover the new clause (11) amounts to a legislative construction of clause (1), demonstrating that the word "citizen" as used in clause (1) does not include corporations. Note the proviso at the end of clause (11). Clause (11) is not to affect any rights which any citizen may have under clause (1). But if "citizen" in clause (1) includes corporations of neutral countries, and if clause (11) is not to affect any right conferred by clause (1), then clause (11) is absolutely meaningless, for it purports to affect only corporations of neutral countries. The only escape from the dilemna is the sensible one of saying that "citizen" as used in clause (1) does not include corporations.

If the word "citizen," as used in clause (1) was not intended to include corporations then there is no inconsistency between clauses (1) and (6). But

if there is an inconsistency (on the theory that the word "citizen" as used in clause (1) does include corporations), then clause (6) governs. Two well established rules of statutory construction compel that result. They are, first, when inconsistent, a specific provision governs as against a general provision (*Townsend* v. *Little, et al.*, 109 U. S. 504, 512; 39 Cyc. 1130; *United States* v. *Jackson*, 143 Fed. 783, 787), and, second, when two provisions are inconsistent the last in order of arrangement will control (36 Cyc. 1132; *United States* v. *Jackson*, 143 Fed. 783, 787; *In re Richards*, 96 Fed. 935, 939).

III

CONCLUSION

The original Trading with the Enemy Act gave the appellant no right to recover his property. Appellant is not one of the "enemies" given the right to recover property by the Amendment of June 5, 1920. That amendment expressly excluded corporations of neutral countries, some of whose stock was owned by citizens of enemy countries. Appellant is such a corporation. It follows that the judgment below was right and should be affirmed here.

JAMES M. BECK,
Solicitor General.
MERRILL E. OTIS,
Special Assistant to the Attorney General.

APPENDIX A

Section 2 of the original Trading with the Enemy Act, defining who are "enemies" under the act:

SEC. 2. That the word "*enemy*," as used herein, *shall be deemed to mean*, for the purposes of such trading and of this Act—

(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and *any corporation incorporated* within such territory of any nation with which the United States is at war or incorporated *within any country other than the United States and doing business within such territory*.

(*b*) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

Appendix B

Section 9 of the Trading with the Enemy Act, including the amendment of June 5, 1920, and including also the amendment of March 4, 1923. The amendment of March 4, 1923, added clauses (9), (10), and (11). The amendment of June 5, 1920, added all of subdivision (b) except clauses (9), (10), and (11).

Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Prop-

erty Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the

United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or

other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled. under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was con-

veyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection—

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SWISS NATIONAL INSURANCE COMPANY, LIMITED *v.* THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 132. Argued November 18, 1924.—Decided February 2, 1925.

1. Where a corporation was an "enemy" within the definition of the Trading with the Enemy Act because doing business in Germany, the enemy status of its property then seized in this country was not changed by a subsequent cessation of such business. P. 44.
2. The fact that an enemy corporation ceased to be an enemy when the war was ended by the Joint Resolution of July 2, 1921, did not entitle it to a return of its seized property; for, by § 12 of the Trading with the Enemy Act, such claims were to be settled by future direction of Congress. *Id.*
3. Clause 1 of § 9–b of the Trading with the Enemy Act, as amended June 5, 1920, c. 241, 41 Stat. 977, which provides for return of seized enemy property whose owner was and remains a "citizen or subject" of a nation other than Germany, Austria, Hungary or Austria Hungary, cannot be construed as including corporations. So *held* in view of the use of "citizen or subject" in other clauses of the section relating only to natural persons, and more particularly because the 6th clause of the same section makes a special classification of partnerships, associations and corporations, allowing return of property if they were and remain entirely owned by subjects or citizens of nations other than those above mentioned. P. 45.
4. Whether the terms "citizen or subject" are broad enough to include corporations depends upon the intent to be gathered from the legislation in which they occur. P. 46.

5. Clause 11 of § 9–b of the Trading with the Enemy Act, added by the amendment of March 4, 1923, c. 285, 42 Stat. 1511, amounts to a legislative construction of clause 1, as above construed. P. 48.

53 App. D. C. 173 (289 Fed. 571) affirmed.

APPEAL from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of the District which dismissed the appellant's bill against the Alien Property Custodian and the Treasurer of the United States, to recover securities seized and held under the Trading with the Enemy Act.

Mr. Hoke Smith, for appellant.

Mr. Merrill E. Otis, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for appellees.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is an appeal from the Court of Appeals of the District of Columbia under Section 250 of the Judicial Code.

The Swiss National Insurance Company filed a bill in equity against the Alien Property Custodian and the Treasurer of the United States in the Supreme Court of the District to recover securities to the value of about one million dollars. These it had before the War deposited in the various state treasuries because required by the state laws as a condition of doing insurance therein. The Alien Property Custodian had seized them in November, 1918, as property of an enemy, under the definition of Section 2, par. (a) of the Trading with the Enemy Act, approved October 6, 1917, c. 106, 40 Stat. L. 411, that the word "enemy" should be deemed to mean and include for the purpose of the Act "any . . . corporations incorporated within any country other than the United States and doing business within" the "territory (including

that occupied by the military and naval forces) of any nation with which the United States is at war." The plaintiff's petition admitted that at the time of the seizure the plaintiff was doing business in Germany, and was then an enemy of the United States under the definition, and that the seizure was lawful. It is further conceded in argument that the stock of the plaintiff corporation was largely held by Germans, and a failure to aver the contrary in the petition makes this fact a part of the case on the motion of defendants to dismiss the bill.

The grounds stated in the bill for its recovery of the securities were threefold—first, that since the seizure the company had ceased to do business in Germany; second, that the war had been officially declared ended, and, third, that by virtue of the amendment of the Trading with the Enemy Act, approved June 5, 1920, c. 241, 41 Stat. 977, the plaintiff became expressly entitled to the recovery sought.

The motion of defendants was granted, and the bill dismissed. The decree of the District Supreme Court was affirmed by the District Court of Appeals.

The first contention, that because the company had ceased to do business in Germany after the seizure the Alien Property Custodian lost his right to continue to hold the property, can not be sustained. A change like this could not take away the status of the seized property as enemy property. The withdrawal from business in Germany might well involve a transfer of something of value from the plaintiff to enemy citizens or subjects and strengthen the enemy resources.

Second, it is argued that as the War ended by Joint Resolution of July 2, 1921, 42 Stat. 105, the plaintiff thereby ceased to be an enemy and was entitled to a return of its property without express legislation giving such a right. It is clear from Section 12 of the Trading with the Enemy Act, 40 Stat. 411, 424, that Congress did

not intend that such a right should exist. One clause of that section provides:

"After the end of the War any claim of any enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

The argument for the appellant is that when the War ended, it ceased to be an enemy and so the words quoted do not apply to it. This is an impossible construction of the section. After the end of the War, there could be no enemy in the sense in which the appellant argues. The word "enemy" used in Section 12 of course refers to the person who or corporation which fulfilled the definition of an enemy during the war. It follows that the right of the appellant to recover its property must depend on the Congressional direction subsequent to the original Act. This brings us then to the amendment to the Trading with the Enemy Act of June 5, 1920, 41 Stat. 977.

The third argument of the appellant is then directed to the question whether the appellant comes within the classes of enemies given the right to recover their property from the Alien Property Custodian by the 1920 amendment. Section 9, paragraph a, of that amendment provides for a return by order of the President to a person not an enemy claiming an interest in property seized by the Custodian, and, failing such order, allows a suit in equity to recover the property or money due. Par. b gives a similar opportunity to anyone who is the owner of property seized and held by the Custodian, if the President finds the owner to have been in one of eight defined classes at the time of the seizure. The first class among these is:

"A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and [who] is at the time of the return

of such money or other property hereunder a citizen or subject of any such nation or State or free city".

The sixth class is this:

"A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and [which] was entirely owned at such time by subjects or citizens of nations, States or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder."

It is urged for appellant that it is a citizen of Switzerland and is thus included with those favored in the first class. Section 2 of the original Trading with the Enemy Act approved October 6, 1917, c. 106, 40 Stat. 411, and unrepealed provides that: "The word 'person' as used herein shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic" and the word "enemy" is declared to be equally inclusive. But there is in the Act and its amendments no such definition of the words citizen or subject. The term citizen or subject may be broad enough to include corporations of the country whose citizens are in question. *Paul* v. *Virginia*, 8 Wall. 168; *Selover* v. *Walsh*, 226 U. S. 112; *Western Turf Association* v. *Greensburg*, 204 U. S. 359. Whether it is so inclusive in any particular instance depends upon the intent to be gathered from the context and the general purpose of the whole legislation in which it occurs. *United States* v. *Northwestern Express Co.*, 164 U. S. 686, 689. The first clause of paragraph b refers to a citizen or subject who may change his nationality which could hardly refer to a corporation. The second and third clauses describing the 2nd and 3rd classes refer to married women and obviously the term citizen or subject in them includes only natural persons. Clause 4

concerns a citizen or subject of Germany accredited to the United States as the wife or child of a diplomatic officer, of course, a natural person. Clause 5 describes a citizen or subject transferred after arrest to the custody of the War Department evidently only a natural person. In clause 6, the subjects or citizens therein referred to are the owners of partnerships, associations or incorporated bodies indicating that they, too, are natural persons. The context would, therefore, seem to show that the words are not used in the paragraph to include more than individuals. Where, as in the amendment to Section 9 of the year before, July 11, 1919, c. 6, 41 Stat. 35, a proviso was intended to include individuals and corporations, the word persons is used in connection with the words citizens or subjects and thus no doubt is left of the inclusive effect of the proviso. The foregoing inferences as to the narrower scope of the term citizen in paragraph b are not conclusive though they are persuasive.

But the strongest and to us the convincing argument that the language of clause 1 of par. b was not intended to include corporations is the especial mention of partnerships, associations and corporations in clause 6 as a different class from that of clause 1 of the same section. That class is partnerships, associations, corporations, who were enemies under the Act because of the business they did in Germany or Austria-Hungary, but whose owners as partners, associates or stockholders were not enemies either at the time of the sequestration or at the time of the return.

It was evidently intended by Section 9–b not to allow any individual enemies to be favored unless they as women only acquired their status as enemies because of marriage to a male enemy, or unless they were diplomatic representatives of the enemy countries, or members of their families, and the property involved was within

the United States because of their diplomatic service, or unless they were enemies interned in the United States during the War and were living in the United States at the time of the return of their property. There was an obvious purpose to exclude all other individual Germans or Austrians from the privileges of the section and it was to carry out this exclusion that clause 6 was drafted to cover especially the subject of corporations, partnerships and associations in which Germans or Austrians should have no interest. It was of a piece with the subsequent provision of the 5th section of the Joint Resolution of July 2, 1921, ending the War (42 Stat. 105, 106, c. 40), designed to retain in custody the property of all German and Austrian nationals deposited with the Custodian in order to aid this country and its nationals in collecting claims for losses against the two enemy governments. The design was further subsequently revealed, though not so closely adhered to, in clause 11, added to Section 9, par. b, by the second amendment to the Trading with the Enemy Act (42 Stat. 1511, 1513, c. 285), by which property could be returned to non-German or non-Austrian corporations provided that Germans or Austrians did not own fifty per cent. of the stock.

Clause 11 of the second amendment was in fact a legislative construction of clause 1 of par. b of Section 9 in the amendment of 1920 as we construe it, because otherwise and according to the contention of the defendants, a non-German or non-Austrian corporation though doing business in Germany or Austria could, under clause 1 and without clause 11, recover its property whatever its stock ownership.

Had no clause 6 been inserted in the Act, possibly the words citizens or subjects of clause 1 might have been held to include corporations; but, with a specification of them as a separate class, it would violate an obviously sound rule to include them by construction in clause 1 also as citizens or subjects.

Much has been said in respect to the intent of Congress to be liberal in this series of acts as shown by the correspondence of the Attorney General and his subordinates with the Congressional Committees; but nothing has been called to our attention that seems to us to have real significance in respect to the exact point in this discussion.

In order to supply some reason or occasion for clause 6, if clause 1 is to be held to include corporations as citizens or subjects, it is suggested for appellants that the clause was intended to cover German and Austrian corporations entirely owned by citizens of the United States or of other countries than Germany or Austria. We think this a far fetched argument to explain the very general words of this clause when such a purpose might have been easily attained by specific provision for such exceptional instances. Under the appellant's construction of clause 6, the improbable overlapping duplication of clause 1 and clause 6 is so manifest that we think the construction must be rejected. We concur, therefore, with the conclusion of the Court of Appeals, and the District Supreme Court.

Affirmed.

MR. JUSTICE McKENNA participated in the consideration of this case and concurred in the opinion prior to his resignation.

The separate opinion of MR. JUSTICE McREYNOLDS.

This cause requires interpretation of Section 9, Trading with the Enemy Act, approved October 6, 1917, c. 106, 40 Stat. 411, 419, as amended by the Act of June 5, 1920, c. 241, 41 Stat. 977, copied below.*

* SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom

Section 2 of the original Act, which has remained unchanged, declares—

"The word 'person,' as used herein, shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic;" and that the word "enemy" shall be deemed to mean—

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war [or an ally of such nation], or resident outside the United

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any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer,

States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war [or an ally of such nation] or incorporated within any country other than the United States and doing business within such territory. . . ."

For many years appellant has been incorporated under the laws of Switzerland. Prior to 1917 and continuously thereafter until 1922 it did an insurance business in Germany. From 1910 until November 18, 1918, it carried on the same business within several of our States, and as security for its obligations deposited many domestic

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assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) *In respect of all money* or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof, at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war or of a nation which was associated with the United States in the prosecu-

bonds—a million dollars. On the latter date—a week after the armistice—the Alien Property Custodian took possession of these bonds, and either he or the Treasurer of the United States now holds them. Claiming the sequestered securities or their proceeds under Section 9, Subsection (b), appellant began this proceeding in the Supreme Court, District of Columbia, November 28, 1921. That court held the corporation could not prevail because subjects of Germany held some of its stock; and upon motion dismissed the bill. The Court of Appeals affirmed the decree. The corporation came within the term "enemy" solely because of its business within Germany; but

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tion of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

it is admitted that enemy subjects owned and controlled a majority of the capital stock. Apparently the sequestration was permissible—its propriety after cessation of hostilities is not for our determination.

As an incorporated citizen or subject of Switzerland appellant claims to come within Paragraph (1) of the amended Act—

"(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city."

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(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government. [Or]

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the

On the other hand the insistence is that although the words "citizen or subject" often include corporations as well as natural persons, this is not necessarily true but depends always upon the intent disclosed by context and other accompanying circumstances. Further, that although corporations would normally fall within the words of Paragraph (1), without more, the contrary intent is disclosed and they are excluded therefrom by the provisions touching certain corporations found in Paragraph (6)—

"A partnership, association, or other unincorporated body of individuals outside the United States, or a

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return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests of voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;—

Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery

corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder."

Also, that the purpose to exclude corporations from Paragraph (1) is further accentuated by the legislative construction disclosed by Paragraph (11), adopted March 4, 1923, c. 285, 42 Stat. 1511, 1513—

"(11) A partnership, association, or other unincorporated body of individuals, having its principal place of

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of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian:

Provided, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed

business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under Paragraph (1) of this subsection."

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to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then

The proviso of Paragraph (11) sufficiently repels the suggestion that it restricts Paragraph (1)—"This subsection [paragraph] shall not affect any rights which any citizen or subject may have under Paragraph (1) of this subsection."

Reporting, June 21, 1917, (H. Rep. 85, 65th Cong., 1st Sess.), the House Committee on Interstate and Foreign Commerce recommended passage of the original Trading with the Enemy Act, and said—

"The chief objects of this bill are (1) to recognize and apply concretely, subject to definite modifications, the principle and practice of international law interdicting trade in time of war, and (2) to conserve and utilize upon

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his legal representative may proceed for the return of such property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

(g) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof.

a basis of practical justice enemy property found within the jurisdiction of the United States. . . . Citizens cannot be permitted directly or indirectly to augment the material resources of the enemy by commercial intercourse, and the necessity for this interdiction is more obvious today than at any period of the world's history. Never were the industrial, commercial and financial resources of belligerent nations so vital to the success of war as now. It is not extravagant to affirm that the effective organization of these resources is more likely to determine the result of the present conflict than armies and navies. Therefore, everything reasonably possible should be done to prevent our enemy from reaping the advantages of commercial transactions with the people of the United States. To summarize, the purpose of the bill is not to create new international rules or practices, but to define and mitigate them."

In a favorable report on the same measure, August 31, 1917, (S. Rep. 113, 65th Cong., 1st Sess), the Senate Committee on Commerce said—

"The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the Act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the President, which will prevent our enemies and their allies from receiving any benefits therefrom until after the war closes, leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion prevails

at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of this country until the war ends."

The intent to conserve and utilize enemy property upon a basis of practical justice and to prevent the owners from receiving benefits therefrom until after the war, but without ultimate confiscation, is clear. And, where the words permit, the statute and its amendments should be liberally interpreted to that end.

By executive orders the President vested certain wide powers, conferred upon him by the Trading with the Enemy Act, in the Alien Property Custodian; and that officer diligently proceeded to sequestrate property which, as he held, belonged to enemies. See *Central Trust Co.* v. *Garvan,* 254 U. S. 554, 567; *Stoehr* v. *Wallace,* 255 U. S. 239, 245; *Commercial Trust Co.* v. *Miller,* 262 U. S. 51, 56. Reporting to the President, February 22, 1919, (Senate Doc., vol. 8, pp. 9, 13) the Custodian said—

"At the close of business on February 15, 1919, 35,400 reports of enemy property had been received. The property of each enemy person is treated in the office as a trust and administered by an organization which is built upon the general lines of a trust company. The number of separate trusts now being administered amounts to 32,296 [at one time, it is said, they amounted to 50,000—Senate Hearing, S. 3852, July 27, 1922, p. 21], and have an aggregate value of $502,945,724.75. About 9,000 of these cases are covered by reports in which the administration has not yet reached the stage of valuation. When the entire number of trusts reported shall have been finally opened on the books and the readjustment of values consequent upon appraisal shall have been com-

pleted, it is safe to say that the total value of the enemy property in the hands of the Alien Property Custodian will reach $700,000,000. . . .

"The legislative intent was plainly that all enemy property, concealed as well as disclosed, should be placed entirely beyond the control or influence of its former owners, where it cannot eventually yield aid or comfort to the enemy directly or indirectly. Until the peace terms are finally signed and the ultimate disposition of enemy property determined by the act of Congress, it shall be the firm purpose of the Alien Property Custodian to carry out the will of the Congress in respect thereto. Neither litigation nor threat of litigation ought to be interposed to stay that purpose."

During hostilities and thereafter he sequestered the property of enemy subjects, of citizens of the United States, of associated nations and of neutrals, found in the Philippine Islands, the Hawaiian Islands, the Virgin Islands, Porto Rico, and throughout continental United States. It included practically all forms of tangible and intangible assets—industrial plants, chemical and woolen mills, steamship lines, banks, land and cattle companies, salmon factories, mines of gold, silver and other metals, corporate bonds and shares of stock, real estate, trusts represented by securities, liquid assets, thousands of patents (5700), trade-marks, prints, labels and copyrights, etc., etc. The individual items varied in value from one dollar to thousands, even millions of dollars. The enactment was novel, and gave rise to many troublesome questions of fact and law.

After the conclusion of hostilities insistent demands were made for return of the property belonging to citizens of the United States, of associated powers, of neutrals, and of the states partly composed of territory detached from Germany or Austria.

The Act of July 11, 1919, c. 6, 41 Stat. 35, added to Section 9 a proviso which gave right of recovery to sub-

jects of associated nations whose property had been sequestrated solely because of residence within territory occupied by enemy forces, e. g., Belgium and Northern France. There were several hundred cases of French and Belgian property taken solely because the owners were in such occupied territory. [H. Comm. Hearings 1920, vol. 232–1, part 8, p. 11.] This amendment (copied in the margin *) applied to "a *person* who was an enemy or ally of enemy" and "is a *citizen or subject* of such associated nation." The words "citizen or subject" include "person," and "person," according to the statutory defi-

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* *Provided, however,* That in respect of all property heretofore determined by the President to have been held for, by, on account of, or on behalf of, or for the benefit of a person who was an enemy or ally of enemy, if the President, after further investigation, shall determine that such person was an enemy or ally of enemy solely by reason of residence in that portion of the territory of any nation associated with the United States in the prosecution of the war which was occupied by the military or naval forces of Germany or Austria-Hungary, or their allies, and that such person is a citizen or subject of such associated nation, then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian, or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said enemy or to the person by whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian. And the receipt of the said enemy or of the person by whom said property was conveyed, transferred, assigned, or delivered to the Alien Property Custodian, shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States as the case may be, and of the United States in respect of all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

nition, includes "corporation." The same meaning of "citizen or subject" should be accepted wherever they occur in the section.

March 31, 1920, the Attorney General advised the House Committee on Interstate and Foreign Commerce (H. Rep. 1089, 66th Cong., 2nd Sess.)—

"The Secretary of State has written to me that this Government has recognized that the provinces of Alsace and Lorraine have now become a part of France and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these provinces who have acquired French nationality under the Versailles treaty of peace cannot fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the Trading with the Enemy Act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.

"The Secretary of State also points out that this Government has recognized the Republics of Poland and Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes, and that for this Government to retain the property of persons who are citizens of those countries and resident within their borders would have a prejudicial effect upon the relations between the countries in question and the United States. The Secretary of State's recommendation was that any amendment to the Trading with the Enemy Act should be broad enough to authorize the return of property belonging to citizens of these countries. He also felt that the amendment should cover the cases of residents of territory which may be allotted, under treaties yet to become effective, to an allied or associated power (as, for example, Trieste), as well as territory which, under plebiscites to be held in accordance with treaty provisions, may be allotted to a neutral country (as, for example, that portion of Schleswig which may be allotted to Denmark).

"I am herewith forwarding to you a draft of a bill to amend Section 9 of the Trading with the Enemy Act, which I believe will provide the relief requested by the Secretary of State."

May 5, 1920 (H. Rep. 1089, 66th Cong., 2nd Sess.), the Secretary of State wrote to the Attorney General—

"I have the honor to refer to my letter of March 23, 1920, concerning an amendment to Section 9 of the Trading with the Enemy Act, authorizing the release of property taken over by the Alien Property Custodian belonging to enemy persons who, by virtue of the peace treaties, become citizens, subjects or nationals of countries other than Germany, Austria or Hungary. In addition to the classes of property referred to therein, I believe that any amendment to Section 9 should also contain provisions permitting the return of all property which, at the time it was taken over by the Alien Property Custodian, belonged to nationals, citizens or subjects of the United States, as well as those of neutral or friendly states and of Turkey and Bulgaria.

"The various neutral and allied states whose nationals' property has been taken over by the Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or otherwise, for some time have been pressing for the release of such property. It appears that the Department of Justice has ruled that, under the Trading with the Enemy Act in its present form, it is not in a position to release this property. During the actual conduct of hostilities, it may have been advisable to retain such property. In view, however, of the cessation of hostilities, this Department feels that the government should no longer retain this property, even though a technical state of war may still exist. To do so would undoubtedly create an unfavorable impression in the states concerned, and would be of no advantage to the United States in its negotiations with enemy countries."

Enclosing the letter last quoted, the Attorney General wrote again to the House Committee, May 11, 1920 (H. Rep. 1089, 66th Cong., 2nd Sess.)—

"Referring to my letter of March 31, concerning certain legislation amendatory to Section 9 of the Trading with the Enemy Act to be submitted to your committee at the suggestion of the Secretary of State, as stated to you in my letter of April 22, through inadvertence the draft of the proposed legislation was not enclosed in the letter of March 31, and thereafter the Secretary of State requested that the matter be held up so that certain additional relief, which he considered necessary to give, might be incorporated in the proposed amendment. These suggestions he has since furnished to me, and the inclosed draft of a bill, amending Section 9, has been drawn with a view to meeting these suggestions. I am also enclosing a copy of his letter to me, dated May 5, 1920, in order that your committee may have the benefit of the information which it contains.

"The relief called for by this letter required extensive changes in the text of the bill which was designed to accompany my letter of March 31, and accordingly I will reanalyze its provisions, and indicate the change which it would make in existing law. . . .

"Subsection (b) of the proposed amendment provides, in substance, for the return of all enemy property, except that held by persons who are in fact bona fide subjects or citizens of Germany, Austria or Hungary."

May 21, 1920, the Secretary of State sent the following to the same Committee (H. Rep. 1089, 66th Cong., 2nd Sess.)—

"The Attorney General has informed me that on May 11, 1920, he submitted to you a draft of an amendment to Section 9 of the Trading with the Enemy Act, permitting the return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral

states and states associated with this government in the World War, as well as to persons who have or will, in pursuance of treaty provisions, become citizens or subjects of such states, for example Alsace-Lorraine, or citizens or subjects of new states which have been recognized by this government, such as Poland and Czechoslovakia.

"The draft, it is understood, is largely based on representations from this Department, made in view of the fact that the Attorney General holds that under the Trading with the Enemy Act, in its present form, he is unable to release property to owners, who when it was taken over were included, for any reason, in the terms 'enemy' or 'ally of enemy,' as used in the Act, and consequently, in spite of strong representations by various neutral and associated governments, it has been impossible to return the property of their nationals, which it would appear this government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this government with the governments concerned, and I am strongly of the opinion that Section 9 of the Act should be amended at an early date, so as to permit in proper cases the return of such property. I hope that it will be possible to give favorable consideration to the matter, and that an amendment of the Act can be passed before the recess of Congress."

The House Committee held protracted hearings (H. Comm. Hearings 1920, vol. 232-1, part 8); and heard representatives of the State Department, the Attorney General's Office and the Alien Property Custodian, who stated what had been done and pointed out the purpose of the proposed amendments. The following is quoted from statements of Mr. Hill, Assistant to the Solicitor, State Department, and Mr. Boggs, Special Assistant to the Attorney General.

"The Chairman. [Mr. Hill,] does the seizure and retention of this property, by the Alien Property Custodian, of citizens of Czechoslovakia, Jugo-Slavia, Bulgaria, Turkey and Alsace-Lorraine, involve any embarrassment on the part of the State Department?

"Mr. Hill. It does; yes, sir. In addition to that, they have taken the property of citizens of Switzerland, Holland and other neutral countries, who at the time by reason of residence in Germany or otherwise, were included in the term 'enemy.' We have taken over that property, and under the present wording of the Act the Custodian cannot release it, and the Attorney General cannot upon application act favorably, because it was, technically, enemy property at the time. We have a number of cases of that kind and they are causing a great deal of embarrassment.

"I may also refer to the case of Czechoslovakia. This government has recognized the government of Czechoslovakia. Congress made an appropriation for a minister to that country and we have accredited a minister there. This government has recognized the existence of that country through the Executive, and yet we continue to hold the property of its citizens, which we cannot release at this time without an amendment of the Act, because they were enemies at the time the property was taken over. The Czechoslovakian government has pressed us a good deal for the return of that property. Conditions in Czechoslovakia, Poland, Jugo-Slavia, etc., are very serious and the return of their citizens' property, in view of the very advantageous rates of exchange at this time, would be of material assistance in the rehabilitation of those countries.

"Take the case of Poland; the same situation exists there. We have a great deal of Polish property. Where the Poles were residing in that part of Poland which was formerly Austria-Hungarian or German territory, the de-

partment has been very much embarrassed because there is no discretion with the Attorney General to return such property. There has been considerable irritation shown by the various neutral countries and considerable pressure by these new associated states, such as Poland and Czecho-slovakia and also Jugo-Slavia, which is a part of the Kingdom of the Serbs, Croats and Slovenes. We continue to hold the property of their citizens, although they were our associates during the war.

"Mr. Denison (of the committee). Under the terms of this bill can that situation be met in the case you referred to of citizens of Sweden and Norway?

"Mr. Hill. Paragraph 1 on page 4 permits the return of property of 'a citizen or subject of any nation or state or free city other than Germany or Austria or Hungary or Austria-Hungary (including any state or free city in the four nations last named).' That would permit the return of such property."

"Mr. Dewalt (of the committee). [Mr. Boggs,] does the proposed Act have in contemplation the cases of residents of Alsace-Lorraine, occupied territory?

"Mr. Boggs. Yes, sir.

"Mr. Dewalt. How do you protect them and what rights do they receive under this act?

"Mr. Boggs. That refers to subdivision No. 1 of subsection *b*, contained on page 4 of the present draft. 'A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary'—as it now reads—'(including any State or free city in the four nations last named), and is at the time of the return of his money or other property hereunder a citizen or subject of any such nation or State or free city.'

"Now, that would permit the return to a person who was not a citizen at the time the property was taken and is not now a citizen of one of the enemy countries. In order to clarify the situation with regard to Alsace-Lor-

raine and other countries that have been transferred from enemy to nonenemy or friendly status, by virtue of the war, there has been inserted the proviso" [to Section 9 quoted above].

The foregoing letters and statements indicate the complicated situation which followed common acceptance of the Treaty of Versailles and failure by the United States to end the technical state of war until July 2, 1921 (c. 40, 42 Stat. 105). They reveal the desire of the Executive Departments for prompt return of sequestered property not owned by bona fide subjects or citizens of Germany or Austria-Hungary, and their interpretation of the proposed enactment. Paragraphs (1), (4), (6), (7) and (8) of subsection (b) apparently originated with the State Department. The House Committee made a favorable report upon the bill, accompanied by these letters (H. Rep. 1089, June 2, 1920, 66th Cong., 2nd Sess.), and among other things said—

"The bill has the approval of the Departments of Justice and State, as will appear by the letters attached and which are made a part of this report. . . .

"The United States, while holding approximately $556,000,000 worth of private property which it found in this country belonging to individual citizens of enemy countries residing in their country at the outbreak of the war and still residing there, does not intend to confiscate this property. It was the intention of Congress when the property was taken that it should merely be held in custody during the war and that after the war the property or its proceeds should be returned to the owners. It has never been the purpose or the practice of the United States to seize the private property of a belligerent to pay our government's claims against such belligerent. Such practice is contrary to the spirit of international law throughout the world. The reasons for the enactment of the pending measure are clearly set forth in the accompany-

ing communications received from the Attorney General and the Secretary of State. For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe. For these reasons the committee favorably reports the bill as above amended."

The House (Cong. Rec. vol. 59, part 8, p. 8429) passed the bill shortly after this report, and within a few days thereafter the Senate took like action (*id.* 8475). The manifest design was to restore certain property in compliance with the original purpose of Congress.

The amending statute re-enacted the material provisions of original Section 9 as Subsection (a), and added six subsections—(b), (c), (d), (e), (f) and (g). It deleted the proviso of July 11, 1919, concerning persons in occupied territory, and inserted a general proviso applicable to the whole section, which directs that no *person* shall be deemed or held to be *citizens or subjects* of Germany or Austria-Hungary who had been or should become citizen or subject of any state or nation partly composed of territory once held by either of those empires.* " Person," of course, includes corporation, and thus, in the section now to be construed, " citizen or subject " clearly include corporations and have their true and normal meaning.

* No person shall be deemed or held to be a citizen or subject of Germany, or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be

Behn, Meyer & Company v. *Miller* 266 U. S. 457, considers Section 9, and declares—

"Subsection (a) of Section 9 gives now, as the same words gave from the first, the right of recovery to any person never 'an enemy or ally of enemy,' within the statutory definitions. . . . Subsection (b) adds to those allowed to recover from the first a considerable number always within the definition of 'enemy' and affords to them the measure of relief which Congress deemed proper long after peace had been actually restored. . . . Before its passage the original Trading with the Enemy Act was considered in the light of difficulties certain to follow disregard of corporate identity and efforts to fix the status of corporations as enemy or not according to the nationality of stockholders. . . .

"Section 7, Subsection (c), was never intended, we think, to empower the President to seize corporate property merely because of enemy stockholders' interests therein. Corporations are brought within the carefully framed definitions (Sec. 2) of 'enemy' and 'ally of enemy' by the words 'Any corporation incorporated within such territory of any nation with which the United States is at war [or any nation which is an ally of such nation] or incorporated within any country other than the United States and doing business within such territory.'"

We there pointed out that under the Act a corporation is an entity with character of its own irrespective of the status attributed to stockholders, and is "enemy" only when directly within the statutory definition. The theory that all corporations are excluded from Subsection (a)

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concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part).

because some are specifically mentioned in Subsection (b), Paragraph (6), was definitely rejected; and we held that a corporation of the Straits Settlements (British in character) which had never done business in enemy territory did not come within the definition, although German nationals owned the controlling interest.

In his letter of May eleventh the Attorney General expressed the view that Subsection (b) provided "for the return of all enemy property, except that held by persons who are in fact bona fide subjects or citizens of Germany, Austria or Hungary;" and the Secretary of State thought that it permits the "return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral states, and states associated with this government in the World War, as well as to persons who have or will, in pursuance of treaty provisions, become citizens or subjects of such states, for example, Alsace-Lorraine, or citizens or subjects of new states which have been recognized by this government, such as Poland and Czechoslovakia."

The eight paragraphs of Subsection (b) are separated by "or," and owners of seized property who are within any described class may recover. Every paragraph adds some owners, and none restricts another by express words. The apparent purpose was to relieve any owner *if* within *any* paragraph—not to mark out inclusive and exclusive classes.

Paragraph (1) is broad enough to include the property of all neutrals, and so to interpret it will do no violence to any part of the Act. The words "citizen or subject," as commonly used in international matters, include corporations. *Paul* v. *Virginia*, 8 Wall. 168, 177, 178; *United States* v. *Northwestern Express Co.*, 164 U. S. 686, 689; *Ramsey* v. *Tacoma Land Co.*, 196 U. S. 360, 362; *Moore's International Law Digest*, vol. III, p. 804; vol. VI, pp. 641, 642.

Corporations of neutral countries, although controlled by enemy stockholders, were never declared to be "enemy" unless they did business within hostile territory; the statute gave no regard to residence or nationality of stockholders. Such business also made enemies of neutral individuals; and they can recover under Paragraph (1). Hostilities having ended, neutral nations could properly demand the same right for their corporations. Confiscation is everywhere disavowed; neutral property may not be used for adjusting claims against belligerents; and ordinary fair dealing requires its release. To seize the effects of a neutral corporation after cessation of hostilities and then hold them solely because of some enemy stockholder, would defeat the lawmakers' honorable intention and give rise to grave suspicion concerning the purpose of our government. On the argument counsel for appellees admitted that the view which he advocated would prevent return of the sequestered property of a corporation organized under the laws of a neutral nation if a German subject owned a single share of the stock—if, indeed, he owned less than one per cent., while Americans or neutrals held the remainder. This unfortunate, if not absurd, result indicates the unsoundness of the proposed construction.

Paragraphs (2) and (3) add certain women who married enemy nationals; (4) and (5) add diplomatic and consular officers and interned persons; (7) and (8) make further definite additions.

Paragraph (6) adds to those already described, "a partnership, association, or other unincorporated body of individuals outside the United States" (Germany and Austria-Hungary are outside); also "a corporation incorporated within any country other than the United States (this includes Germany and Austria-Hungary) and was entirely owned at such time by subjects or citizens of nations, States or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at

the time of the return of its money or other property hereunder." This includes corporations of Germany or Austria-Hungary, or of any state left within those empires,* if entirely owned by citizens of the United States or an associated power or a neutral. The practice of organizing local companies to do the business of foreign owners has become very general. Certain important German corporations were wholly owned by individuals or corporations of the United States. British subjects had large investments in German concerns; and probably the same is true of subjects of Sweden, Norway, Holland, Denmark, Switzerland and Italy. There were obvious reasons for releasing property of a corporation when wholly owned by our own people, by nationals of associated powers, or by neutrals; and Paragraph (6) effects this.

Consider—

That the purpose of the original Act was to provide for the care and administration, pending the war, of property which might be helpful to our enemies, and to deprive the owners of its use " until the war closes."

That no corporation was declared " enemy " because of the nationality of stockholders, but only when incorporated within enemy territory or doing business there.

That property of Americans, of citizens of associated nations and of neutrals was sequestered because of residence or business carried on within enemy countries.

That although appellant had been permitted to do business within the United States during the whole period of

* German Civil Code (1900)—

Sec. 22. An association whose object is the carrying on of an economic enterprise acquires juristic personality, in the absence of special provisions of Imperial law, by grant from the State. The power to make such grant belongs to the State in whose territory the association has its seat.

Sec. 23. An association whose seat is not in any State may, in the absence of special provisions of Imperial law, be granted juristic personality by resolution of the Federal Council.

actual hostilities its property was seized after the armistice when such property could not be utilized for hostile purposes.

That the Act of 1919 permitted return of property of any "person" (this includes corporation) then a "citizen or subject" of an associated power treated as "enemy" solely because of residence within enemy lines.

That after the armistice our Executive Departments represented to Congress the urgent demands for sequestered property of citizens and subjects of associated nations, neutrals, and states composed in part of territory formerly within Germany or Austria-Hungary, and reported the impending deleterious effect upon our foreign relations.

That the agents of the State Department and the Attorney General's office pointed out that the amendments proposed by them provided, "in substance, for the return of all enemy property except that held by *persons* who are in fact bona fide subjects or citizens of Germany, Austria or Hungary."

That a general proviso applicable to *all* of Section 9 directs that, for its purposes, "no *person* shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary," if he becomes the subject of any nation composed in part of territory formerly belonging to those empires, and it extends relief to such persons. The words "citizen or subject," as there used, clearly include "persons," and, by statutory definition, the latter includes a corporation.

That the original seizure of the property in question would be difficult to justify; and certainly the United States can have no moral right longer to retain or to confiscate it. Neutral property cannot be used in settlement of claims against enemy countries. So to do would be wholly inconsistent with our traditions and pretensions.

That the words "citizen or subject of any nation," in Paragraph (1), according to common usage, are broad enough to include corporations.

That the use of the disjunctive "or," in separating the paragraphs of Subsection (b), indicates that if an owner comes within the description of any class he may recover. The fact that he falls within more than one is not material.

That Paragraph (6) describes a class of owners not within the words of Paragraph (1) and affords possible relief, obviously desirable, for our own citizens, associates and neutrals.

That a liberal construction should be given the amendment with a view to carrying out its benevolent purposes, and not a narrow, strained one which would reflect discredit upon the Government.

That the construction asked by appellees is neither natural nor necessary and would lead to the unfortunate conclusion that seized property of a neutral corporation must be retained because a German owns one share out of many thousand. Without doing violence to any part of the Act and by giving effect to every word therein, citizens of neutrals may secure just relief and the United States escape the serious charge of oppressive and unfriendly action.

In view of all these things, I am unable to accept the view which appellees urge upon us. It seems sufficiently plain that the court below fell into error; and to affirm the challenged decree would leave our Government in a most unenviable position. "There is no debt with so much prejudice put off as that of justice."